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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 35

LLOYD BARENBLATT, PETITIONER,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 15, 1958
CERTIORARI GRANTED APRIL 14, 1958

SUPREME COURT OF THE UNITED STATES

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[fol. C] [Caption omitted]

[fol. D] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

(Grand Jury Impaneled on September 30, 1954, and Sworn in on October 5, 1954)

Criminal No. 1154-54

Grand Jury Original (2 U.S.C. 192)

UNITED STATES OF AMERICA,

v.

LLOYD BARENBLATT.

INDICTMENT—Filed November 22, 1954

The Grand Jury charges:

On June 28, 1954, in the District of Columbia, a subcommittee of the Committee on Un-American Activities of the House of Representatives was conducting hearings, pursuant to Public Law 601, Section 121, 79th Congress, 2d Session, (60 Stat. 828), and to H. Res. 5, 83d Congress.

Defendant, Lloyd Barenblatt, appeared as a witness before that subcommittee, at the place and on the date above stated, and was asked questions which were pertinent to the question then under inquiry. Then and there the defendant unlawfully refused to answer those pertinent questions. The allegations of this introduction are adopted and incorporated into the counts of this indictment which follow, each of which counts will in addition merely describe the question which was asked of the defendant and which he refused to answer.

COUNT ONE

Are you now a member of the Communist Party?

COUNT TWO

Have you ever been a member of the Communist Party?

COUNT THREE

Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?

[fol. E] COUNT FOUR

Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?

COUNT FIVE

Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions?

/s/ Leo A. Rover, United States Attorney in and for the District of Columbia.

A True Bill: /s/ Wilson T. M. Beale, Foreman.

[fol. F] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

PLEA OF DEFENDANT—Filed December 6, 1954

On this 3rd day of December, 1954, the defendant Lloyd Barenblatt, appearing in proper person and by his attorney Joseph A. Fanelli, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads Not Guilty thereto.

The defendant is committed to the District jail.

By direction of

Bolitha J. Laws, Presiding Judge, Crimmal Court #.....Assign.

Harry M. Hull, Clerk, by /s/ John R. Hess, Deputy Clerk.

Present: United States Attorney, by Al Stevas, Assistant United States Attorney.

Powell, Official Reporter.

[fol. H] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION TO DISMISS—Filed January 7, 1955

The defendant moves that the Indictment be dismissed on the following grounds:

1. The Indictment does not state facts sufficient to constitute an offense against the United States of America.

2. The Indictment recites that a subcommittee of the Committee on Un-American Activities was conducting hearings. The Indictment is defective in that a refusal to answer a question before a subcommittee of a committee is not made a crime by Title 2, Section 192, United States Code. *United States* v. *Resnick*, 299 U. S. 207; *Todd* v. *United States*, 158 U. S. 278; *United States* v. *Clark*, 1 Gall. 497.

3. The Indictment is invalid under the First Amendment to the United States Constitution and under Rule 7(c) of the Federal Rules of Criminal Procedure because the Statute and Resolutions referred to in the Indictment, but not set forth therein, authorize interference by a Con-

gressional Committee with rights guaranteed by the First Amendment, including specifically those of free speech and free press, and do not contain any limitation upon such authorization adequate to protect the citizen in his rights. [fol. I] *United States* v. *Rumely*, 345 U. S. 41; *Grosjean* v. *American Press Co.*, 297 U. S. 233; *Near* v. *Minnesota*, 283 U. S. 697; *Kilbourn* v. *Thompson*, 103 U. S. 168; *McGrain* v. *Daugherty*, 273 U. S. 135.

4. The Indictment is invalid under the Fifth and Sixth Amendments to the United States Constitution and under Rule 7 (c) of the Federal Rules of Criminal Procedure because of uncertainty and indefiniteness, in that the Statute and Resolutions referred to in the Indictment are vague and indefinite and establish no criteria which will limit or define the authorized investigation and establish no criteria to indicate to the witness what questions asked have legal pertinence to the investigation authorized. *United States* v. *Cruikshank*, 92 U. S. 542; *United States* v. *Hess*, 124 U. S. 483; *The Schooner Hoppet and Cargo* v. *The United States*, 7 Cranch 389; *United States* v. *Carll*, 105 U. S. 611; *Evans* v. *United States*, 153 U. S. 584, *United States* v. *Schneiderman*, 102 F. Supp. 87; *Sutton* v. *United States*, 157 F. 2d 661.

5. The Indictment is defective by reason of its multiplicity and is invalid under the Fifth, Sixth and Eighth Amendments to the Constitution of the United States, in that a single crime has been divided and subdivided into five separate crimes, and that therefore the defendant has been made subject to excess fine and cruel and unusual punishment and deprived of a fair trial. *Bowers* v. *United States*, 202 F. 2d 447; *Mathis* v. *United States*, 200 F. 2d 697; *United States* v. *Harris*, 26 F. Supp. 788.

[fol. J] 6. The Indictment is invalid under the Constitution of the United States and the Amendments thereto in that the defendant is not advised in each of the Counts as to the pertinency of the question stated in each Count and therefore there is an inadequate statement of the nature of the charge against him and the defendant cannot adequately prepare his defense. *Bart* v. *United States*, 203 F. 2d 45; *United States* v. *Kamp*, 102 F. Supp. 757.

7. The Indictment is defective in that the Statute and Resolutions referred to in the Indictment contravene the Constitution of the United States and the Amendments thereto by failing to provide for necessary limitations upon the actions of Congressional committees and sub-committees and authorize unconstitutional invasion of free speech and a free press, and permit inquiry into political beliefs, religious beliefs, personal and private affairs and associational activities. *United States* v. *Rumely,* 345 U. S. 41; *Kilbourn* v. *Thompson;* 103 U. S. 168; *McGrain* v. *Daugherty,* 273 U. S. 135.

8. The Indictment and each Count thereof is invalid under the Constitution of the United States and the Amendments thereto in that the defendant is not advised in each of the Counts, or any of them, of the nature of subject of the inquiry then being conducted by the Permanent Subcommittee on Investigations Of The Committee On Government Operations, and in that there is no statement of fact showing the competency of the so-called Permanent Subcommittee at the time of the investigation.

9. The Indictment is defective in that it fails to contain any statement showing the pertinence of the question [fol. K] contained in each Count of the Indictment and in that such pertinence is left wholly to presumption and conjecture.

10. The Indictment is defective and is invalid under the Constitution of the United States and the Amendments thereto, and particularly, the Fifth Amendment, the Ninth Amendment and the Tenth Amendment, in that the Congress of the United States, both through the statute and Resolutions referred to in the Indictment, has assumed to invade the judicial power, and that the Congress of the United States has through such legislation and rule and through its procedures acting through this legislative committee violated the principles of the Constitution of the United States and the Amendments thereto which separate the Legislative, Executive and Judicial powers, and that under the Resolutions referred to in the Indictment and the practices of the Committee referred to in the Indictment

this defendant has been subject to pains and penalties contrary to the Constitution of the United States and the Amendments comprised within the Bill of Rights thereunder. *United States v. Lovett*, 328 U. S. 303; *Quinn* v. *United States*, 203 F. 2d 20; *Myers* v. *United States*, 272 U. S. 52; *Kilbourn* v. *Thompson*, 103 U. S. 168; *Lichter* v. *United States*, 334 U. S. 742; *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579.

11. The Indictment is invalid under the Ninth and Tenth Amendments of the Constitution of the United States in that the Resolutions and Statute referred to in the Indictment are an infringement of the rights reserved to the people and exceed the limitations of power which were conferred by the people of the United States upon the Congress.

[fol. L] 12. The Indictment is invalid in that the Resolutions and Statute referred to therein deprive the defendant of life, liberty and property without due process and without trial by a duly constituted court and that such acts are invalid under Article I, Section 9 of the Constitution of the United States.

13. The Indictment is invalid under the Constitution of the United States and the Bill of Rights in that the legislative inquiry provided by the Statute and Resolutions referred to deny the defendant the right to be represented by counsel, did not inform him or provide for information of any law which he might be charged with violating, did not provide for confrontation by witnesses against the defendant and did not protect the defendant against self-incrimination.

14. The Indictment is invalid under Rule 7 (c) of the Rules of Criminal Procedure which requires a plain, concise and definite statement of the essential facts. There are no facts pleaded or stated in the Indictment with regard to the pertinency of the testimony sought to be elicited which is merely a conclusion of law embodied in conclusory form in the following language of the Indictment.

> "Was asked questions which were pertinent to the question then under inquiry."

The Indictment does not set forth the nature of the inquiry nor the investigation and the defendant was not thereby advised of the nature of the charge against him.

[fol. M] 15. The Indictment is invalid in that the Resolutions and Statute referred to in the Indictment are invalid under the Constitution of the United States and the Amendments thereto and Rule 7 (c) of the Rules of Criminal Procedure, in that they are so vague as to furnish no ascertainable standard of guilt.

16. The Indictment is invalid in that there was a total absence of any legal evidence before the Grand Jury.

Dated: Washington, D. C.,
January 7, 1955.

/s/ Joseph A. Fanelli, Fanelli & Freehill, Attorneys for Defendant, 1701 K Street NW, Washington, D. C.

Served 1/7/55, Leo A. Rover, usd.

[fol. O] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 1154—54

Charge Vio. T-2 Sec. 192 USC

UNITED STATES,

v.

LLOYD BARENBLATT, Defendant.

ORDER DENYING MOTION TO DISMISS—March 2, 1955

On this 2nd day of March, 1955, the motion of defendant to dismiss the indictment taken under advisement by the

Court on the 18th day of February, 1955, is by the Court denied.

By direction of

Henry A. Schweinhaut, Presiding Judge, Criminal Court #2.

Harry M. Hull, Clerk; by /s/ John J. Hanneny, Deputy Clerk.

Present: United States Attorney, by Wm. Hitz, Assistant United States Attorney.
T. O'Neal, Official Reporter.

[fol. P] [File endorsement omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 1154—54

UNITED STATES,

v.

LLOYD BARENBLATT.

Washington, D. C.

Transcript of Proceedings—Wednesday, March 14, 1956

Before Judge Alexander Holtzoff and a jury for trial, at 10:30 a. m. today.

APPEARANCES:

For the United States: Mr. William Hitz.

For the defendant: Mr. Joseph A. Fanelli; Mr. Phillip Wittenberg, of New York, New York.

[fol. 3]

COLLOQUY BETWEEN COURT AND COUNSEL

The Deputy Clerk: The United States v. Lloyd Barenblatt.

Mr. Hitz: The Government is ready.

Mr. Wittenberg: The defendant is ready.

May I approach, sir, for a moment? There are two motions.

The Court: Are you a member of this Bar?

Mr. Wittenberg: I was admitted, sir, for the purposes of this case.

Mr. Fanelli: That was before Judge Schweinhaut, Your Honor. And he was introduced to Your Honor yesterday.

The Court: Very well. Of what bar are you a member?

Mr. Wittenberg: Of the New York Bar, and of the Supreme Court of the United States.

The Court: I think I should apprise you of our practice. We are very glad to have you represent the defendant. Our practice is to require local counsel to be present throughout the trial and to be sufficiently familiar with the case so that if anything happens, then local counsel can carry on.

Mr. Wittenberg: Sir, I recognize the need to me for that.

The Court: Very well.

[fol. 4] Mr. Wittenberg: We will have two motions today, and I wonder if at least one of them should not be made without the presence of the panel here.

The Court: You may come to the bench.

(At the bench:)

ON DEFENDANT'S MOTION TO DISCHARGE JURY PANEL

Mr. Wittenberg: Our first motion will be addressed to the panel.

The Court: What is your motion?

MOTION TO DISCHARGE JURY PANEL AND DENIAL THEREOF

Mr. Wittenberg: The motion is to discharge the panel, because we feel that they, having sat here yesterday while a case involving a much more important person connected with Communism was being tried, and having heard the

type of evidence which they are going to hear in a case of this kind, and having heard Your Honor's comments with respect to it——

The Court: They were not here when I delivered my decision.

Mr. Wittenberg: Oh, I know that, sir.

The Court: The panel had been excused for the day.

Mr. Wittenberg: I remember that, sir. But they were here during the trial.

The Court: During part of the trial.

Mr. Wittenberg: So they did hear certain animadversions in regard to the Communist Conspiracy.

[fol. 5] The Court: I am going to deny the motion.

Mr. Wittenberg: We very respectfully except.

And as to this, I don't mind whether the jury is here.

The Court: I beg your pardon?

DEFENDANT'S MOTION TO DISMISS INDICTMENT

Mr. Wittenberg: I would like to make a motion in regard to the indictment, to dismiss the indictment.

The Court: That comes late. Ordinarily such motions have to be made prior to trial.

Mr. Wittenberg: We did make the motion prior to trial. But since the motion was made and decided over a year ago, there have been at least five more or less important decisions referring to the general language of the indictment and matters that should be contained in it.

The Court: Will you state briefly what your points are, because I am not inclined to hear formal, lengthy argument on a matter of this kind at this late date, especially since a motion to dismiss has been heard and denied.

Mr. Wittenberg: But that was a year ago, sir.

The Court: No, it was not a year ago, was it?

Mr. Wittenberg: I thought it was. I thought it was decided early last year.

The Court: That is quite correct—on the 18th of February.

[fol. 6] Mr. Wittenberg: That is right—just a little more than a year ago.

The Court: What additional points do you want to raise?

Mr. Wittenberg: May I have reference to my own memorandum?

The Court: Yes, indeed. You may bring your notes here.

Mr. Wittenberg: Thank you. I believe your Honor has in that file which is before you the memorandum submitted on the original motion. I don't want to repeat that.

The Court: No. But what additional points do you want to raise?

Mr. Wittenberg: That is what I wanted to do, sir. I wanted to make the references with regard to that memorandum, and connect them.

The Court: Suppose you tell me what the additional matters are that you wish to raise, which you did not raise a year ago.

Mr. Wittenberg: This is raised by the decision, in so far as it may still be in effect, in Watkins v. The United States.

The Court: I will disregard the Watkins case. I think it is my duty to disregard the Watkins case, because the Court of Appeals set aside its opinion and granted a re-[fol. 7] hearing en banc of the situation there, as though the Watkins case had never been decided by the Court of Appeals.

Mr. Wittenberg: And I wish to add to my point 1-C, in my original memorandum, Grossman v. United States.

The Court: But what is the point you raise?

Mr. Wittenberg: The point that is under, sir,—and I was trying to be brief about this—is that to plead pertinency there must first be a statement of a grant of authority made by Congress to the investigating committee, or in this case to the standing committee.

The Court: I am going to hold a mere allegation of pertinency is sufficient under the new rules.

Mr. Wittenberg: And under that may I cite United States v. Corliss Lamont.

The Court: I am going to hold that while there must be an allegation of pertinency, the details leading to the conclusion of pertinency need not be set forth in the indictment.

Mr. Wittenberg: May I, however, just state the authorities upon which I rely?

The Court: No.

Mr. Wittenberg: You prefer not?

The Court: I am familiar with the authorities.

You know, we don't regard these technicalities any more, certainly not since the new rules.

[fol. 8] Mr. Wittenberg: Under D, sir, a point which I made in my prior brief, I merely add an additional argument that the indictment must fall, since the pertinency of the questions constituting the counts is not shown.

The Court: My view is that this is sufficient. As a matter of fact, I have passed upon sufficiency of indictments of this type, and I don't think there is any difference in this from the usual form that is followed in this District and that has been approved time and time again.

Mr. Hitz: That is right.

Mr. Wittenberg: May I call your attention to merely one thing in that indictment, and that is the word "merely," which rather upset me——

That it merely describes the questions, but does not disclose anything further in regard to them.

The Court: That is a matter of evidence. The indictment alleges the defendant unlawfully refused to answer. It would be surplusage to plead those details.

Mr. Wittenberg: And, under the most recent decisions, that the defendant was not made aware of the pertinency of the questions.

The Court: I have ruled on that point.

Mr. Wittenberg: Sir, these are merely subdivisions.

The Court: But it is the same point. I don't hear lengthy argument.

[fol. 9] Mr. Wittenberg: I did not mean to make it lengthy.

The Court: You have stated your point.

Mr. Wittenberg: If Your Honor believes I have, that is sufficient.

May I have an exception to Your Honor's rulings?

The Court: Yes, indeed.

Mr. Wittenberg: Thank you, sir.

The Court: We will proceed to empanel the jury.

(Counsel having returned to trial tables:)

The Court: The Clerk will swear all the jurors for the voir dire examination.

(The prospective jurors were duly sworn for the voir dire examination.)

* * * * * * *

[fol. 28]

* * * * * * *

(Thereupon the jury and the alternate jurors were duly sworn to try the case.)

* * * * * * *

[fol. 42] OFFERS IN EVIDENCE

Mr. Hitz: I would like to have marked for Government Exhibit No. 1 for identification House Resolution No. 2.

The Deputy Clerk: Government Exhibit No. 1 for identification.

(House Resolution No. 2 was marked for identification as Government Exhibit No. 1.)

Mr. Hitz: Which states that Joseph Martin, of Massachusetts, was elected Speaker of the House, and Lyle O. Snader, Clerk of the House.

Next, to be marked Government Exhibit No. 2, House Resolution No. 5.

Mr. Wittenberg: Is that for identification, sir?

Mr. Hitz: For identification.

The Deputy Clerk: Government Exhibit 2 for identification.

(House Resolution No. 5 was marked for identification as Government Exhibit No. 2.)

Mr. Hitz: Government Exhibit 2 is the Rules of the House of Representatives for the Eighty-third Congress. Included in the rules is the authority for the Un-American Activities Committee to act.

The next is Government No. 3, which is a certification of the membership of the Un-American Activities Committee of the House for that session.

[fol. 43] Mr. Wittenberg: Is this for identification, sir?

Mr. Hitz: For identification.

The Deputy Clerk: Government Exhibit 3 for identification.

(The certification of membership of the Un-American Activities Committee was marked for identification as Government Exhibit No. 3.)

Mr. Hitz: Government Exhibit 4 for identification is a certified copy of the report of the House committee citing Mr. Barenblatt for contempt.

The Deputy Clerk: Government Exhibit 4 for identification.

(The certified copy of committee report was marked for identification as Government Exhibit No. 4.)

Mr. Hitz: Government 5 for identification, a certified copy of House Resolution 666, which is the resolution of the House which cited Barenblatt for contempt to the United States Attorney.

The Deputy Clerk: Government Exhibit 5 for identification.

(The certified copy of House Resolution 666 was marked for identification as Government Exhibit No. 5.)

Mr. Hitz: Government 6 for identification is the certification of the Speaker of the House of the contempt to the [fol. 44] United States Attorney.

The Deputy Clerk: Government Exhibit 6 for identification.

(The certification of the Speaker of the House was marked for identification as Government Exhibit No. 6.)

Mr. Hitz: The next exhibit will be one that will bear upon matters that will be addressed to the Court only.

The Court: Very well.

Mr. Hitz: And I think I will now offer in evidence Government Exhibits for identification 1 through 6.

Mr. Wittenberg: No objection.

The Court: They may be admitted.

(Government Exhibits marked for identification Nos. 1 through 6 were accordingly admitted in evidence.)

* * * * * * *

[fol. 46] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Very well. You may proceed.

Mr. Hitz: I would like to invite the Court's attention to the first paragraph of the indictment, in which there is referred to Public Law 601, section 121, and I would like at this time to cite to the Court the place where that may be found in the Statutes at Large, which is 60 Statutes at Large, 828, and invite the Court's attention to the fact that that is the official Act, the Legislative Reorganization Act of 1946, which gave statutory existence to the Un-American Activities Committee, and that the rule which I have offered in evidence here as Government Exhibit No. 2 is merely a re-enactment of that statute for the purposes of this session.

The Court: Is that statute, by the way, found in the United States Code?

Mr. Hitz: It is not in the United States Code.

The Court: Because the volume of Statutes at Large is very bulky.

Mr. Hitz: Yes, it is; it is a large one. But it is not in the United States Code, Your Honor. It is exactly the same as Government Exhibit No. 2.

I think, Your Honor, under our understanding, we are ready to proceed now with matters addressed to the Court, as distinguished from jury matters.

The Court: Then, under the circumstances, the jury [fol. 47] will retire to the jury room.

Ladies and gentlemen of the jury, you may follow the Marshal and retire to the jury room until your presence is needed.

(The jury having left the courtroom:)

Thereupon DONALD APPELL, called as a witness by counsel for the United States and being first duly sworn, was examined and testified as follows:

The Court: You may proceed.

Mr. Hitz: Your Honor, the next exhibit the Government would like to have marked is Government Exhibit No. 7 for identification.

You will note, Mr. Clerk, it has already been stamped, and it also has the correct number on it——

Which is a government print entitled "Communist Methods of Infiltration (Education)," which are hearings of this committee for February 25, 26 and 27.

The Deputy Clerk: Government Exhibit 7 for identification.

(The Government print entitled "Communist Methods of Infiltration (Education)" was marked for identification as Government Exhibit No. 7.)

[fol. 48] Mr. Wittenberg: If Your Honor please, I object to the introduction.

The Court: It has not been offered in evidence.

Mr. Wittenberg: Oh, I thought he had offered it.

Mr. Hitz: I am merely identifying it, so far.

The Court: Counsel has asked that it be marked for identification.

OFFERS IN EVIDENCE AND COLLOQUY THEREON

Mr. Hitz: I would like to offer the entire document, inasmuch as it is a part of the fund of information that had been received by the committee, under oath, and prior to the testimony of the defendant in the instant hearing. I will particularly refer, however, to certain passages, being approximately ten or twelve pages in number.

The Court: Are you offering it at this time?

Mr. Hitz: I am offering it now.

The Court: Now I will hear you.

Mr. Wittenberg: If Your Honor please, I object to the introduction of this in evidence, on the ground that it appears from its face that this was not a public document; that it was printed for the use of the Committee on Un-American Activities. There is no proof that this document or any part of it was communicated to the defendant, or that by it he was enabled to learn any of the objectives of the committee, or that he would be bound by or that this Court ought to hear testimony from——

[fol. 49] The Court: Nobody is "bound" by any one piece of evidence. That does not affect the admissibility.

Mr. Wittenberg: The admissibility, sir, may depend——

First of all, as to competence, this appears to be a document for the use——

The Court: You have stated your objection. It is not my practice to hear argument on objections to evidence, unless I invite argument.

I assume that this is not offered as proof of the facts contained in the document.

Mr. Hitz: That is correct.

The Court: That it is only offered as proof tending to show what matters and what information was before the committee, as an aid in determining whether the questions propounded to the witness were pertinent to the inquiry.

Is that the purpose?

Mr. Hitz: That is the purpose, whether they be true or untrue.

The Court: I beg your pardon?

Mr. Hitz: Whether they be true or untrue as stated makes no difference.

The Court: Yes.

Mr. Hitz: And we do not assert the truth of what is stated there—merely the fact that they were stated.

[fol. 50] The Court: For the sole purpose, bearing on the issue of pertinency, the Court will overrule the objection and admit the document.

I repeat that it is not admitted as proof of the truth of the statements therein contained, but merely as proof of the information and of the matters that the committee was considering. It is admitted merely on the issue of pertinency of the questions listed in the indictment.

Mr. Wittenberg: May I respectfully except?

(The Government Print heretofore marked for identification as Government Exhibit No. 7 was admitted in evidence.)

The Court: Now do you wish to state what pages you desire to call to the Court's attention?

Mr. Hitz: Yes, Your Honor—pages 1, 2 and 3, to the break in 3.

The Court: Oh, yes.

Mr. Hitz: Your Honor, it may well be that where pas-

sages are not too lengthy, it might make for a more complete written record if they were read to the Court and in the presence of the stenographer; but I will pursue whatever course Your Honor wishes.

The Court: On issues that the Court has to decide, and which are not for the jury, I generally eliminate the reading of exhibits in extenso, because I can read them much faster myself silently than if they were read orally, and [fol. 51] the latter would take too much time.

Mr. Wittenberg: Might I be heard, sir, with respect to the admissibility of these three pages?

The Court: No. I have admitted the whole document. All that counsel is doing is calling the Court's attention to specific parts of the document.

I have admitted the whole document for the limited purpose that I have indicated, and solely for that purpose.

Is there anything else you wish to call to the Court's attention?

Mr. Hitz: Yes, Your Honor. I may say that pages 1, 2 and 3 are being offered to show the statement of the chairman of the committee at the time that the statement was made, with reference to one of the purposes of the hearings involving education.

The Court: Well, just a moment. This transcript in its present posture is not proof of the fact that the chairman made that statement, because this transcript is not authenticated, unless the other side is willing to stipulate that this is an authentic copy.

Mr. Hitz: If they don't stipulate it, I will prove it.

Do you stipulate that this is an accurate portrayal of what did take place, without regard to the truth of what was said?

[fol. 52] Mr. Wittenberg: I don't know that I can make such a stipulation.

Mr. Hitz: I think you can.

Mr. Wittenberg: Because I really don't know whether it is.

The Court: I think you should, Mr. Wittenberg. It is quite customary in this court to waive formal proof of documents, and reserve objections as to relevancy or competency.

Mr. Wittenberg: In view of the fact that this is now being offered piecemeal as to specific pages——

The Court: No; I suggest that you waive formal proof of the accuracy of this entire transcript.

Mr. Wittenberg: I yield to Your Honor in that.

The Court: You will so stipulate?

Mr. Wittenberg: I will.

The Court: It is understood that there is a reservation to you as to any objections as to relevancy or competency.

Mr. Wittenberg: Or whether or not this bears upon the case now before Your Honor, in view of the fact that the material was not transmitted to this defendant.

The Court: That is competency. So you waive formal proof.

Mr. Wittenberg: That is all, sir.

[fol. 53] Mr. Hitz: The next excerpt I would like the Court particularly to notice is pages 30, 31, 32, 33, ending at the top of page 33, after the statement by Mr. Davis as follows:

"No, my activities didn't extend that far."

It is the second line of the testimony.

The Court: I see it.

Mr. Wittenberg: If Your Honor please, while I am perfectly willing to waive formal proof, there are contained on these pages what appear to be quotations.

The Court: I have admitted this document for the purpose that I have indicated.

Mr. Wittenberg: But I make objection now on the ground that there must be proof of these quotations. I can't even waive formal proof with respect to statements not made on the authority of members, but read into the record.

The Court: All you would waive is the proof of the fact that those statements were read into the record—not that they are accurate.

Mr. Wittenberg: Then I waive it, sir.

Mr. Hitz: In connection with the excerpts, pages 30 to 33, Your Honor, I should also like to refer the Court to the commencement of the testimony of that witness, so that we will know where he was called and under what circum-

[fol. 54] stances, and who he is. That will entail also asking

the Court to particularly notice the testimony part of page 3, page 4, page 5, page 6, and the first line of page 7.

Mr. Wittenberg: If Your Honor please, I object to the present offer by the Government.

The Court: This is not an offer. Please don't interrupt. You have objected to the exhibit. I have admitted it and overruled your objection.

All I am asking counsel to do is to assist the Court by pointing out to the Court what particular parts of the exhibit counsel wants the Court to read.

Mr. Wittenberg: But the record will now show, sir, that the Government says these pages prove the facts.

The Court: No, no, no. I don't care if there is any slip of the tongue on the part of counsel. I have indicated the purpose for which I admitted the exhibit.

Mr. Hitz: I don't recall any slip of the tongue on that.

The Court: It doesn't make any difference.

Mr. Hitz: I am not proving the truth of the facts stated. I am proving only that they were stated.

The next portions of this evidence exhibit are pages 95, beginning at the middle of the page, 96, 97, 98, 99, for the first twelve lines of 99, concluding with "Mr. Hicks: Yes." [fol. 55] The next passage I would like the Court particularly to notice is page 108, the statement at the bottom of the page attributed to Mr. Tavenner; all of page 109, page 110, page 111, concluding on page 111 at approximately the fifteenth line, at the end of Mr. Hicks' first statement on the page.

Those are all of the passages that the Government particularly requests the Court to note.

The Court: Before you proceed with the next item of evidence, can you summarize in a sentence or two what you contend this exhibit shows in so far as it is relevant to the issue the Court has to determine?

Mr. Hitz: Yes, Your Honor. The first passage, pages 1 to 3, contain the statements of the then chairman, Mr. Velde, with reference to the subject matter of the "Communist Methods of Infiltration (Education)," which investigation was then commencing.

Mr. Velde stated that they were not investigating education as such, or any universities or schools as such; but that they were investigating such portions of the field of

education where they were able to find and run into subversion.

The Court: I see.

Mr. Hitz: Much as they had already done with good results, legislative and otherwise, in the field of unionism. [fol. 56] On page——

The Court: Without going into these in detail, item by item, what else in a general way do you contend this exhibit shows?

Mr. Hitz: Yes, sir. Then Mr. Davis, whose testimony begins on page 3, was heard to say before the committee that he had been a member of the Communist Party; that he no longer was; that he was willing to give information in his possession with regard to his communist activities and what he knew about the party.

And on pages 31, 32 and 33 there was read to him by committee counsel, Mr. Tavenner, some excerpts from a writing of William Z. Foster, which Mr. Davis acknowledged were official Communist Party dogma and doctrine. And it will be noted that they bear upon the endeavors of the Communist Party within the field of education. Mr. Davis said that those were the objects of the party, so far as he knew.

The Court: Is it your point that the pertinency of these questions is shown by the fact that this defendant was a member of the faculty of an educational institution?

Mr. Hitz: That is right.

The Court: And that the committee was investigating communist infiltration into the faculties of educational institutions?

[fol. 57] Mr. Hitz: It shows the danger to which this committee was addressing its investigation when the witness was called.

The Court: Then I think that is all I need for the moment.

Mr. Hitz: And similarly with respect to the next two passages of another witness.

The Court: If all of these passages bear on that one aspect, I am not going to trouble you to go over them in detail at this time. I will read those passages, of course.

Mr. Hitz: They do all bear

The next Government Exhibit for identification is No. 8, which is a Government Print, as noted on my list, entitled "Education—Part 9."

The Deputy Clerk: Government Exhibit 8 for identification.

(The Government Print entitled "Education—Part 9" was marked for identification as Government Exhibit No. 8.)

Mr. Hitz: Being hearings before this committee on June 28 and 29, 1954.

With reference to Government Exhibit No. 7 that we have just passed from, I am sure the Court will note the dates on which that testimony was taken that we referred to as being prior to the testimony of the witness on trial.

With respect to Government Exhibit 8 for identification, [fol. 58] we offer the entire document, but with particular reference to invite the Court's attention to the testimony of one Crowley—C-r-o-w-l-e-y.

The Court: Are you offering it in evidence?

Mr. Hitz: Yes, Your Honor.

The Court: Is there any objection?

Mr. Wittenberg: The same objection.

The Court: The objection is overruled, it being understood that the document is admitted not as proof of the facts therein contained but merely as bearing on the issue of pertinency as indicating the matters the committee was investigating.

(The Government Print entitled "Education—Part 9," heretofore marked for identification as Government Exhibit No. 8, was admitted in evidence.)

Mr. Hitz: Particularly the Government wishes to invite the Court's attention to the testimony of Francis X. T. Crowley, given before the committee on June 28, 1954, found on page 5755.

I am sorry. Page 5753 is the commencement of the session at which Mr. Crowley testified.

The Court: Does that bear on the same thing?

Mr. Hitz: Precisely the same testimony, yes, sir.

The Court: Very well.

Mr. Hitz: With this one exception, that it goes farther

[fol. 59] than the testimony of Davis and Hicks contained in the other exhibit, because Mr. Crowley names Mr. Barenblatt as a person known to Crowley as a member of the Communist Party. But that is still on the subject matter of the pertinency of the appearance of Mr. Barenblatt before the committee and the questions that were asked of him after he was there.

The Court: You may proceed.

Mr. Hitz: We would like particularly to invite the Court's attention to that portion of Mr. Crowley's testimony which is included between pages 5753 and 5764, at the bottom.

The Court: Very well.

Mr. Hitz: And also to page 5776, beginning shortly above the middle of the page at the break, and going to 5778, approximately a third of the way down page 5778, where the following occurs:

"Mr. Kunzig: Are there any others?"

To end just prior to Mr. Kunzig's stating "Are there any others?"

The next portion of Exhibit No. 8 for the Government is what has been outlined as part (b) on my list of exhibits, which is the testimony of the witness which allegedly constituted the contempt.

The Court: That should be introduced in the presence [fol. 60] of the jury.

Mr. Hitz: And that will be introduced in the presence of the jury.

The next two government exhibits for identification will relate to matters to be covered by the Court alone, and they will relate to proof which is offered by the Government to show that there was a legislative purpose in fact in the testimony of Mr. Barenblatt and the general subject matter in which he testified, to show there were recommendations and legislative action in fact resulting from this and like testimony.

The next government exhibit will be 9 for identification; and the next is Government Exhibit 10 for identification.

I should identify Government Exhibit 9 for the tran-

script record. It is the 1953 annual report of this committee.

The Deputy Clerk: Government Exhibit 9 for identification.

(The annual report of the committee, 1953, was marked for identification as Government Exhibit No. 9.)

Mr. Hitz: The next is Government Exhibit 10 for identification which is the 1954 annual report of this committee.

The Deputy Clerk: Government Exhibit 10 for identifi-
[fol. 61] cation.

(The annual report of the committee, 1954, was marked for identification as Government Exhibit No. 10.)

Mr. Hitz: I would like now to offer Exhibits 9 and 10 for identification. And again I can point out particular parts that I would like the Court particularly to notice.

The Court: Is there any objection?

Mr. Wittenberg: Yes, sir; I object on the same ground, and on the further ground that there appears to be a great deal of matter in both of these reports which has no bearing on the issues before this Court.

The Court: This is an issue to be determined by the Court. And if the matter will have no bearing on the issue, then it won't affect the Court.

I am going to overrule the objection. I make the same ruling as I did before, and admit these exhibits, not as proof of any fact therein contained, but merely as tending to show that there was a basis for asking the questions that were directed to the witness and that the questions were pertinent—solely for that purpose.

(The 1953 and 1954 annual reports of the committee, heretofore marked for identification as Government Exhibits 9 and 10, respectively, were admitted in evidence.)

[fol. 62] Mr. Hitz: It is my understanding that there is no objection to the authenticity of the particular, physical print of these exhibits.

Mr. Wittenberg: That is correct. We waive that.

Mr. Hitz: As in the case of the other exhibits?

Mr. Wittenberg: That is correct.

Mr. Hitz: As to Government Exhibit No. 9 in evidence, I would like to request the Court particularly to notice item (a) on my list.

The Court: Yes.

Mr. Hitz: Which is page 144. And although I have listed these and given a copy to the Court and to the Clerk, I am mentioning this more or less for the benefit of the transcript record, too.

The Court: Yes.

Mr. Wittenberg: May I point out, sir, it is of no help to the defense, because——

The Court: Don't let us engage in colloquy.

Mr. Wittenberg: —because we haven't copies.

The Court: Just a moment. Don't let us engage in facetious colloquy.

Mr. Hitz: Part (a) is page 144 and 145 of this report, that subdivision entitled "Federal Aid to Educational Institutions," which, as noted on the top of page 144, is a part of the larger division entitled "Subsequent Action [fol. 63] Taken by Congress or Executive Agencies on past recommendations."

The Court: That is a little far afield, isn't it, Mr. Hitz?

Mr. Hitz: No, sir.

The Court: "On past recommendations." And the subheading refers to recommendation contained in the annual report of the committee dated January 23, 1941.

Mr. Hitz: Yes, Your Honor. And then action was taken with respect to that recommendation.

The Court: Is this offered to prove that the committee has made legislative recommendations previous to this hearing?

Mr. Hitz: Previous to this. They were acted on in 1952, and they were always subject——

The Court: But the reason the Court raises the question is that obviously these recommendations were not based on the hearings here in question——

Mr. Hitz: Oh, no.

The Court: Because they were recommendations contained in the report dated 1941.

Mr. Hitz: That is quite true. But action was taken in 1952. And at all times there is before this particular com-

mittee the duty to examine and to re-examine existing legislation to see whether it should be modified in any way, strengthened, eliminated, added to, or whatever.

[fol. 64] In fact, right now the matter of Federal Aid to Education is a very much discussed and an open and a sometimes burning question.

The Court: I don't think I shall consider the fact that the committee back in 1941 made some recommendations in regard to legislation. I think that is a little far afield. That goes to probative value.

Mr. Hitz: But it is background for the action taken in 1952 by the committee. And, furthermore, it has this additional bearing. I think that it is important to be able to show, or it is helpful to be able to show, if we can—and here we can—that the committee was taking testimony in a field in which Congress has taken action, that is, in a field that was open to Congress to act in. And it did act in it—that is, as distinguished from unconstitutional legislation.

The Court: I don't think that is the way to prove it, though. That is a question of constittuional law, whether this field is open for Congress to act.

Mr. Hitz: It is also indicative of the proper purpose of the committee, if action was recommended in 1941, taken in 1952, and no——

The Court: I won't hear argument at this time. I have a little doubt as to whether that is not going a little far afield.

[fols. 65-80] I think we will suspend at this time for our luncheon recess.

(At 12:30 p.m. the luncheon recess was taken until 1:45 this afternoon.)

[fol. 81] AFTERNOON SESSION

The Deputy Clerk: Case of United States versus Barenblatt.

Mr. Hitz: I think I was on Exhibit Number 9 and Part A, and there was some discussion as to whether or not that was too remote.

The Court: The whole exhibit is before the Court and if it is too remote the Court will not give it probative effect.

So I do not think any further discussion would be fruitful of results at this particular time.

Mr. Hitz: The next is Part B, which is found on Page 154 of this report.

That is Paragraph Number 37, which is entitled Encouragement of Qualified Informants Against Communist Movements, and it is a part of a larger heading which is itself found on Page 153, which is entitled Recommendations Contained in Annual Report of Committee, 81st Congress, Second Session, dated January 2, 1951.

Item Number 37 that I ask the Court to give attention to is a committee recommendation of '51 followed by an account of the action that was taken in that same year by the Congress.

The Court: As I understand it—I want to be sure that I understand your thought correctly—all that this is being introduced for is to indicate that the committee has made recommendations relating to legislation based upon the [fol. 82] testimony that was taken so that, if that is so, it would appear that the work of the committee had a legislative purpose.

Mr. Hitz: That is absolutely correct.

The Court: That is the only purpose for which this is meant?

Mr. Hitz: That is correct.

The Court: Very well. Then you do not need to go into details.

Mr. Hitz: The next item is on the next page. It is on Page 155. The subject matter is Immunity for Congressional Witnesses. It is Item Number 41 as listed here in this report. Action had theretofore been considered to force the testimony of witnesses who would not testify. It so happens that that legislation was directed against so-called Fifth Amendment witnesses, but at least the subject matter of obtaining information from witnesses who would not give it was being considered by Congress.

We won't speculate, of course, on what they would have done, but the subject matter was there, and they had entered the field. And we say it was a proper field for legislation and legislative investigation.

The next item is listed as D in our list of exhibits and it

is contained on Pages 157 and 158 under a large heading which is entitled, Recommendations Based Upon Investigations and Hearings in the Year 1953.

[fol. 83] I would like to invite the Court's particular attention to the entire, this entire portion.

The Court: Yes. This is only two pages.

Mr. Hitz: Of the report of two pages. Some has an important hearing here and some has little or none, but I think it would be worthwhile to read it all instead of to weed out some that is unimportant and thereby taking the rest out of context.

That concludes the parts of the Government Number Nine that I particularly ask the Court to take notice of, having in mind that the entire document, nevertheless, is in evidence.

The next exhibit is Government Exhibit Ten, which I understand was admitted when Nine was, and is now in evidence.

The Court: Yes. It was admitted for the same limited purpose.

Mr. Hitz: Same limited purpose it is being offered for. The items in Number Ten that we invite the Court's particular attention to are Pages 1 to 3, which is that portion of the report called Foreward (sic).

I should say for the transcribed record that Government Exhibit Ten is the 1954 annual report of this committee. The next portion of this annual report for 1954 is that part of it designated as Michigan, to be found on Page 14.

The Court: Very well. And only the first two paragraphs of that sub-section entitled Michigan, those two paragraphs, [fol. 84] the second of which concludes on Page 15.

Mr. Hitz: The next item is on Page 17—the first full paragraph—I am sorry, it should be Page (sic) 16 and 17. It would be the last paragraph on 16 that we ask the Court to gives (sic) its particular attention to and the carry-over of that paragraph on 17 and the first full paragraph on 17.

And the last portion of the report, Pages 22 and 23, entitled Recommendations Based Upon Investigations and Hearings in the Year 1954.

The Court: I am wondering, now, whether your page

numbers are correct, because the copy I have before me, Pages 22 and 23 are something else entirely.

Mr. Hitz: I wonder if I could see Your Honor's copy?

I think Your Honor is looking at Government Nine and I was looking at Government Ten.

The Court: I am sorry. I think the error is mine.

Mr. Hitz: I wonder if we should go back any?

The Court: No. It is not necessary.

Mr. Hitz: Page 22 of Government Ten is a new topic. It may well be that there are parts of these recommendations based upon the 1954 hearings which would not bear on the investigation into——

The Court: As I understand it, all you are trying to show is that the committee was performing a legislative function?

[fol. 85] Mr. Hitz: That is correct. And it is demonstrably performing it, because we have shown it. It is right here.

The Court: And of course the nature of the recommendations I do not think is something for the Court to consider, but the fact that the committee was making recommendations in this general legislative field is evidence that it was performing a legislative function.

Mr. Hitz: That is absolutely right.

The Court: That is all this evidence is adduced for and received.

Mr. Hitz: And for no other probative value. We offer this, although we feel that proof in this field of actual legislation proposed need not be made at all, we are nevertheless making it.

The Court: No. Because frequently investigations do not result in legislation or in proposed legislation. Sometimes investigations are made in order to determine whether any legislation should be had, and that is still a legislative function.

Mr. Hitz: Of course legislation has to have some beginning at sometime.

The Court: Suppose the investigation results in a conclusion on the part of the committee that there should be no legislation, even so the investigation may be the performance of a legislative function.

[fol. 86] Mr. Hitz: In that connection I have before me a very apt quotation from the Townsend Case, 95 Fed. 2nd 352.

The Court: Yes. I remember that case. I do not think you have to argue that.

Mr. Hitz: Your Honor, that will conclude the evidence we have on the pertinency of the subject matter. We likewise elicit the same evidence as proof of the pertinency of the particular questions that were asked in addition to maintaining with respect to Counts One, Two, Three and Four that those counts are obviously and without, I think, possible dispute, pertinent on their face, and that Count Five may well be considered pertinent on its face certainly if taken in conjunction with an answer to a question which I seek to elicit now from Mr. Appell and I do not think Mr. Appell has been sworn.

The Court: He has been sworn, but has not been identified.

Direct examination.

By Mr. Hitz:

Q. Mr. Appell, will you state your name.

A. Donald T. Appell, A-p-p-e-l-l.

Q. Your occupation?

A. I am an investigator for the Committee on Un-American Activities, House of Representatives.

Q. How long have you been?

A. I am in my tenth year.

Q. Did you take part in the investigation for the committee of subversive and Communist activities in the Michi-

[fol. 87] gan area?

A. I did. On three separate occasions.

Q. And in what year or years?

A. 1951, 1952, 1953, 1954.

Q. Are you able at this stage to tell us whether or not the Michigan Council of Arts, Sciences and Professions was a branch of a national organization of any sort?

Mr. Wittenberg: That is objected to on the grounds that it calls for a conclusion of the witness and that nothing has been shown as a basis for it.

The Court: Objection sustained. I suggest you develop that step by step in view of the fact that objection is made.

By Mr. Hitz:

Q. Mr. Appell have you ever heard of an organization called the Council of Arts, Sciences and Professions?

A. I have, sir.

Q. In 1954 did that organization have any sub-organizations or locals, so to speak?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Wittenberg: Just a moment. That is objected to on the grounds of the competency of the witness to testify unless we know what his connection was and the basis for the conclusion which he is asked to give.

The Court: Are you objecting on the ground that it is hearsay?

Mr. Wittenberg: Hearsay.

[fol. 88] The Court: Objection sustained. Of course the objection may seem technical, but if counsel elects to make it and it is technically well founded in the law the Court has to sustain it.

Mr. Hitz: I understand. It is not subject to proof, not subject to further perusal. He was never a member of it. I have no further questions.

The Court: I suppose if technical proof is required you would have to get either some member of the organization or its constitution; something of that sort.

Mr. Hitz: Nothing further on this subject of pertinency.

Mr. Wittenberg: No cross with regard to that, sir.

The Court: Do you have anything further with this witness?

Mr. Hitz: He said he had no cross with respect to this particular subject. Do you have any cross of this witness on any subject, Mr. Wittenberg?

The Court: No. The cross-examination has to be confined to the direct examination.

Mr. Hitz: I realize that, but he said on this subject.

The Court: After all, you only asked this witness some preliminary questions.

Mr. Hitz: I understand. Now, your question to me, sir?

The Court: Have you anything further with this witness?

Mr. Hitz: No, Your Honor, at this time.

[fol. 89] The Court: The witness may step down. If you need him later you may recall him.

Mr. Hitz: Thank you. We have nothing further on the matter of pertinency of the subject mater (sic) or the particular questions. I am sorry, we do on the last question; we do.

The Court: What are you going to do—you say you do have something on the last question?

Mr. Hitz: That will come out in connection with the testimony before the jury.

The Court: Does the defendant desire to offer any testimony out of the presence of the jury on the issue of pertinency?

Mr. Wittenberg: No, sir. We have nothing to offer at this time. We would like to ask the Court's consideration of this.

We have just been given references to a number of pamphlets which we do not have in our possession and which I have not been able to examine.

If I were to endeavor to address Your Honor with regard to them I certainly should know something of their contents.

May I ask Your Honor's indulgence that we have some time in which we may have these exhibits for the purpose merely of reading them to find out what they contain?

The Court: We will proceed with the trial. Have you got additional copies of those exhibits, because I am going to [fol. 90] take the originals home overnight.

Mr. Hitz: He can have my copies. He will be furnished with copies.

The Court: Very well. You can read them overnight and—because I see that we can't finish the trial this afternoon, and I will withhold ruling on the issue of pertinency until you have an opportunity to state whether or not you wish to offer any testimony on that issue. If you do, I will exclude the jury again and take that testimony.

In the meantime, the Government may proceed with such testimony as it desires to offer in the presence of the jury.

You may bring back the jury.

(Thereupon, at 2:10 p. m. the jury returned to the courtroom.)

Thereupon DONALD T. APPELL was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hitz:

Q. Mr. Appell, will you be good enough to state your full name, please?

A. Donald T. Appell. A-p-p-e-l-l.

Q. And your occupation?

A. I am an investigator for the Committe (sic) on Un-
[fol. 91] American Activities, House of Representatives.

Q. How long have you been?

A. I am in my tenth year.

Q. In June 1954, Mr. Appell, can you tell us who were the members of the Un-American Activities Committee?

Mr. Wittenberg: That is objected to on the grounds that it comes from an incompetent source.

The Court: Objection overruled.

Mr. Wittenberg: Exception.

The Court: I want counsel to come to the bench, please.

(At the Bench)

The Court: I should like to remind counsel that exceptions have been abolished. They were abolished years ago in the Federal courts, so if your objection is overruled, you need not say exception and in fact not only do not need to, I do not think it is proper. The fact that you have made an objection, and the objection is overruled, protects the record as far as you are concerned.

(In Open Court)

The Witness: Congressman Velde of Illinois was the chairman of the committee. The majority members at that

time were Mr. Clardy of Michigan; Mr. Scherer of Ohio; Mr. Kearney of New York; and Mr. Jackson of California. The minority members at that time were Mr. Walter of Pennsylvania; Mr. Moulder of Missouri; Mr. Frazier of Tennessee; Mr. Doyle of California.

[fol. 92] The Court: Mr. Hitz, you have put in evidence as Government Exhibit Number Three a certificate listing the members of the committee.

Mr. Hitz: Yes, Your Honor.

The Court: Of course that was offered for the purpose of the hearing without the jury. But I suppose it would be equally admissible for the part of the case that is to be determined by the jury.

I suggest you re-offer this exhibit. Then the question of the rather technical objection raised by counsel would vanish.

Mr. Hitz: Yes, Your Honor. I will read the exhibit in v[illegible] of counsel's objection.

The Court: Let Government Exhibit Number Three be considered as part of the trial that is being conducted in the presence of the jury.

Mr. Hitz: And may I read it to the jury?

The Court: Yes, indeed.

Mr. Hitz: Office of the Clerk, House of Representatives, Washington, D. C.

I am reading for the record Government Exhibit Number Three, in evidence.

I, Lyle O. Snader, Clerk of the House of Representatives do hereby certify that the following members constitute the Committee on Un-American Activities of the House of [fol. 93] Representatives as is evidenced in the Journal of the House of Representatives of January 19, 1953:

Harold H. Velde, Chairman, of Illinois. Bernard W. Kearney, of New York. Donald L. Jackson of California. Kit Clardy of Michigan. Gordon H. Scherer of Ohio. Francis E. Walter of Pennsylvania. Morgan M. Moulder, of Missouri. Clyde Doyle of California. James B. Frazier, Junior, of Tennessee.

In witness whereof I hereunder do fix my name and the seal of the House of Representatives in the City of Washington, District of Columbia, this 23rd day of July, anno

domini 1954; signed in ink, Lyle O. Snader, Clerk of the House of Representatives.

And it has got his seal over on the lower left-hand corner and here is the exhibit.

By Mr. Hitz:

Q. How many members of that committee? Do not name them; just count them.

A. There are nine.

Q. Were there then in 1954?

A. Yes.

Q. Have you got a copy of Education, Part Nine, the hearings of the Un-American Activities Committee for the dates June 28 and 29, 1954?

A. I have.

[fol. 94] Q. Did Lloyd Barenblatt appear before the Un-American Activities Committee and give testimony in the month of June 1954?

A. He did.

Q. What day?

A. June 28.

Q. Where was this hearing held?

A. In the old House Office Building in Washington, D. C.

Q. Would you be good enough to turn to Page 5753 of Government Number Eight and tell us whether—tell us who was present at the commencement of the hearing of June 28, 1954, of the committee.

Mr. Wittenberg: That is objected to as incompetent and hearsay.

The Court: No. That is not hearsay. He has a right—a person who was present on a particular occasion has a right to state who else was present.

Mr. Wittenberg: Not by way of designating an official qualification of the person present.

The Court: No. That is not hearsay.

Mr. Wittenberg: This witness is obviously not a person who should be testifying as to the qualifications of a congressional member.

The Court: He is not testifying as to qualifications. [fol. 95] The question asked of him is— Were you present on that occasion.

The Witness: Yes. I was.

The Court: Do you remember what committee members were present?

The Witness: I would have to refresh my memory from the records.

The Court: Can you refresh your recollection by referring to Page 5753 of the exhibit to which Mr. Hitz has referred?

The Witness: Your Honor, Mr. Hitz referred to Exhibit Eight. I only have before me Exhibit Nine.

The Court: Have you got anything to refresh your recollection?

Mr. Hitz: He means he has Part Nine. He has Exhibit Eight.

The Court: It has been marked here Exhibit Eight. Does that refresh your recollection?

The Witness: Yes. It does.

The Court: You may answer the question.

By Mr. Hitz:

Q. What members of the committee were present then, sir?

A. The hearing was presided over by the chairman, Mr. Velde and there were present Mr. Jackson, Mr. Clardy, Mr. Scherer, Mr. Walter, and Mr. Frazier.

Q. How many is that?

[fol. 96] A. There are six. I might point out here, Mr. Hitz, that these gentlemen would leave and depart as the testimony was being taken and where a member left or returned to the room it is so noted through the transcript.

Q. Yes. Thank you. And at the commencement, as noted on Page 5753, and to your independent recollection as well, there were six present, right, sir?

A. Yes.

Q. What time of the day of June 28, 1954?

A. This was in the afternoon, as I recall.

Q. Look on 5753 and see if that refreshes your recollection as to when it was—what time of day?

A. I understood you to talk about the appearance of Mr. Barenblatt. The hearing was called to order at 10:30 in the morning.

Q. I mean the day's hearing commencement. Who was the counsel present at the time of the commencement of this hearing in the morning of the 28th of June?

A. Robert Kunzig.

Q. Mr. Appell, at a later occasion after 10:37 a. m. did Mr. Frazier—by the way, if you will look at Page 5753 with reference to Mr. Frazier, do you find any notation which refreshes your recollection as to whether or not Mr. Frazier was present at the beginning of the hearing in the morning?

A. As I stated, the transcript shows that those members [fol. 97] who left and returned, that their leaving or entering is noted in the transcript through the testimony?

Q. With respect to Mr. Frazier at the commencement of the hearing in the morning, does it state appearance shown in transcript?

A. It does.

Mr. Wittenberg: I object to the witness' being led into testifying what is in a record.

The Court: No. Just object. Don't argue.

Mr. Wittenberg: I object to the witness being led into testifying and reading from a record instead of testifying as to his independent recollection.

The Court: Objection overruled. The Court's understanding is that the document is being used to refresh the witness' recollection. Will counsel come to the bench.

(At the Bench)

The Court: Of course, Mr. Wittenberg, you are within your rights and if you want to keep on making technical objections the Court will rule on them. If they are sound the Court will sustain them and if they are not the Court will overrule them. But I think I owe it to you to tell you that members of this Bar do not generally keep urging technical objections.

Mr. Wittenberg: If this witness were a qualified witness, but to produce a clerk instead of a member of the committee or counsel to the committee and then to have him read the [fol. 98] record as though it were his recollection is not fair to the Court.

The Court: These are all matters of record that he is

testifying to. I am just making a suggestion. You can follow such course as you choose. However, I repeat that members of the Bar of this court do not generally invoke technicalities except when something vital is involved or something that counsel thinks could not be proved in a technically correct way.

As I say, you are within your rights and if your objections are sound they will be sustained. But after all, we are not running a law school class of evidence.

Mr. Wittenberg. That is not the point. If they produce a competent witness, I may be able to cross-examine, but if they produce a man who merely reads the record, he may not examine what the committee had in mind.

The Court: He is not testifying what the committee had in mind.

Mr. Wittenberg: He is going to read the record.

The Court: He was asked some questions as to who was present. If you are going to raise technical objections I am going to require the Government to make very technical proof.

Mr. Hitz: I can do that. I can get the stenographer to bring his shorthand notes.

The Court: Because, of course, Mr. Hitz being a very able and experienced trial lawyer, does not want to get any [fol. 99] reversible error in the record and he does not want to leave it open to technical objections at some later stage.

Mr. Hitz: I do not.

The Court: I am going to make him make technical proof, or if he cannot make it I am going to throw the case out, if you object, but I do not see how it is going to help you to insist. You may do so if you choose.

Mr. Wittenberg: No, sir. Only on the subject of the competency of this particular witness, if Mr. Hitz wants to ask me to stipulate that this is a correct transcript of the proceedings, I have no objection.

Mr. Hitz: All right. I will ask you to do that.

Mr. Wittenberg: I will do that. I have no objection to that; it is having this witness testify as if he were competent.

The Court: All he did was testify who was present. However, maybe this will eliminate those matters.

(In Open Court)

The Court: You may proceed, Mr. Hitz.

Mr. Hitz: Your Honor, in view of the stipulation by Mr. Wittenberg that this is a correct transcript of the proceedings, and I believe that is the stipulation, I would like Mr. Wittenberg to affirm it if I am correct.

The Court: Do you so stipulate?

Mr. Wittenberg: Yes.

[fol. 100] The Court: Very well.

Mr. Hitz: I would like, then, without questioning the witness to offer to the Court in evidence for jury purposes that portion of Page 5753 of this Exhibit which is the second paragraph.

The Court: It may be admitted.

Mr. Hitz: May I read it to the jury?

The Court: Yes, indeed.

Mr. Hitz: "Committee members present: Harold H. Velde, chairman——"

You count now, Mr. Appell, as I go along. I cannot count, I am a questioner here——

"Representatives Harold H. Velde, Chairman; Donald L. Jackson; Kit Clardy; Gordon H. Scherer; Francis E. Walter——"

How many is that, sir?

The Witness: Five.

Mr. Hitz: "—and James B. Frazier, Junior (appearance shown in transcript)."

I would like, now, if Your Honor please, to permit me to direct the jury's attention to a matter of evidence which will appear in this exhibit on Page 5755 at the top of the page in parentheses. That item of evidence from this particular exhibit I offer in evidence for jury purposes, enclosed within parentheses. Do you have it?

[fol. 101] The Witness: Yes. I have that.

Mr. Hitz: I offer the parentheses and its contents in evidence.

The Court: It may be admitted.

Mr. Hitz: May I read it?

The Court: Yes, indeed.

Mr. Hitz: Quote (Representative James B. Frazier, Junior, entered the hearing room at this point.) Unquote.

By Mr. Hitz:

Q. You have added up to five, have you, sir?
A. Yes.
Q. And one more is how much?
A. Six.

Mr. Hitz: I would like, now, Your Honor, to turn to Page 5778, at the bottom, and I offer in evidence those two items contained in two sets of parentheses at the bottom of that page for purposes of the jury's consideration.

Mr. Wittenberg: May I be excused if I mark my copy to show these two sets of parentheses?

The Court: Surely.

Mr. Hitz: I offer those in evidence for this purpose.

The Court: They may be admitted and they may be read to the jury.

Mr. Hitz: You have gotten to six, have you, Mr. Appell? [fol 102] The Witness: Yes.

Mr. Hitz: "(Representative Morgan M. Moulder entered the hearing room at this point.)"

Will you add one to the six and what do you get?

The Witness: Seven.

Mr. Hitz: Continuing without omission.

"(Representative Francis E. Walter left the hearing room at this point.)"

Will you take one away from seven, sir, and what do we get?

The Witness: We have six.

The Court: How many members were there on the committee, Mr. Hitz?

Mr. Hitz: Nine.

The Court: A majority was a quorum?

Mr. Hitz: A majority was a quorum and we now have six members present.

By Mr. Hitz:

Q. Mr. Appell, would you be——

Mr. Hitz: I think I will do it in this way, Your Honor. I would like to, in order to save time, to invite a stipulation

from Mr. Wittenberg that there are no further entries of congressmen leaving or entering who are members of this committee from Page 5778 until the testimony of Mr. Barenblatt on 5801.

I can represent to Mr. Wittenberg that I believe that [fol. 103] to be a fact and I invite that to be a stipulation.

Mr. Wittenberg: If that is a fact I shall certainly so stipulate.

Mr. Hitz: If it please the Court, if that is so stipulated it necessarily follows that the six members that have been counted by Mr. Appell were those present at the time of the commencement of Mr. Barenblatt's testimony, which, Your Honor, is to be found on Page 5801, and at this time, Your Honor, I would like to offer in evidence for jury purposes of this case that portion of the Government Exhibit Number Eight which is Education, Part Nine of the print of hearings of this committee, as begins on Page 5801, six lines above the break on that page, where it states "Mr. Kunzig: Mr. Lloyd Barenblatt."

I would like to offer from that place to Page 5807 at this time.

The Court: That is the defendant's testimony?

Mr. Hitz: That is the defendant's testimony and up to that point it is without omission to that point. We offer it to 5807, at the end of the large print on that page and may it be received in evidence for jury purposes, Your Honor?

The Court: It will be admitted.

Mr. Hitz: The Government would like to proceed in this fashion, if it is agreeable to the Court, to have Mr. Appell read this testimony, question and answer, to the jury.

[fol. 104] The Court: He may do so.

By Mr. Hitz:

Q. Mr. Appell, would you be good enough to turn to 5801 where Mr. Kunzig calls Mr. Barenblatt and read there.

The Court: I think before you commence, Mr. Hitz, may I make this request of you.

Mr. Hitz: Yes, Your Honor.

The Court: When the reading reaches any one of the

five questions involved in the indictment, will you call the Court's attention to that?

Mr. Hitz: I will, Your Honor.

The Court: You may proceed.

The Witness: Shall I start with Mr. Barenblatt being asked to identify himself to the committee or with the oath by the chairman?

The Court: Where do you want to begin?

Mr. Hitz: Where he is called by Mr. Kunzig, a few lines above the break there.

The Witness: "Mr. Kunzig: Mr. Lloyd Barenblatt.

"Mr. Velde: In the testimony you are about to give before this subcommittee, do you solemnly swear you will tell the truth, the whole truth, and nothing but the truth, so help you God?

"Mr. Barenblatt: I do.

"Mr. Velde: Be seated.

[fol. 105] Testimony of LLOYD BARENBLATT, accompanied by his counsel, Philip Wittenberg.

"Mr. Kunzig: Would you state your full name, please, sir?"

The Court: May I suggest this. All the jurors have to follow your reading. I would suggest you read a little slower and loud and distinctly. The Court has the advantage of having your copy before it; but the jurors do not.

The Witness: Thank you, Your Honor.

"Mr. Barenblatt: My name is Lloyd Barenblatt, B-a-r-e-n-b-l-a-t-t.

"Mr. Kunzig: What is your present address, sir?

"Mr. Barenblatt: My present address is Route No. 2, Pleasant Valley, N. Y.

"Mr. Kunzig: What is your present address, sir?

"Mr. Barenblatt: My present address is Route No. 2, Pleasant Valley, N. Y.

"Mr. Kunzig: Mr. Barenblatt, I see that you are accompanied by counsel. Would counsel please state his name and office address for the record.

"Mr. Wittenberg: Philip Wittenberg, W-i-t-t-e-n-b-e-r-g, 70 West 40th Street, New York City, N. Y.

"Mr. Kunzig: Thank you, sir.

"Mr. Barenblatt, will you give the committee a brief [fol. 106] resumé of your educational background?

"Mr. Barenblatt: Yes, sir. I suppose they want me to begin at the high school level?

"Mr. Kunzig: Fine.

"Mr. Barenblatt: I attended Clinton High School in New York City.

"Mr. Kunzig: When did you graduate?

"Mr. Barenblatt: January 1940, as I recall. I then enrolled as a student at the College of the City of New York; that was in February 1940. I left the College of the City of New York for one semester. I enrolled in the United States Maritime Service. When there I was struck with spinal meningitis. I left the Maritime Service to recuperate and went back to school while I was convalescing. My classification was 4-F. However, as soon as I felt better I appeared for voluntary induction into the United States Army for aviation cadet training.

"Mr. Kunzig: What is your present age, Mr. Barenblatt?

"Mr. Barenblatt: Thirty-one, sir.

"Mr. Kunzig: Have you completed your formal education?

"Mr. Barenblatt: Well, I still intend to complete the re- [fol. 107] quirements for a doctor of philosophy degree. I have a bachelor's degree from City College. I am sorry. I didn't finish my educational background.

"Mr. Kunzig: Go right ahead.

"Mr. Barenblatt: It was an oversight on my part. Excuse me.

"Mr. Kunzig: All right.

"Mr. Barenblatt: I attended the University of Iowa when I was discharged from the Army. I spent a year and a half, I believe, at the University of Iowa. In the summer of 1947 I enrolled in the University of Michigan in the graduate school of studies for the purpose of working for the Ph.D. in social psychology.

"Mr. Kunzig: What period of time exactly were you at the University of Michigan?

"Mr. Barenblatt: I was in residence at the University of Michigan from the summer of 1947 until the spring semester of 1950.

"Mr. Kunzig: Did you know Francis Crowley at that time, who testified here this morning?

"Mr. Barenblatt: Sir, I would like here to state my objections to the power and jurisdiction of this committee to inquire into my political beliefs, my religious beliefs, and [fol. 108] any other personal and private affairs or my——"

Mr. Kunzig interrupts.

"Mr. Kunzig: Just a minute. I asked you a very simple question, which I don't think has anything to do with religious beliefs, or all the other beliefs you mentioned. Do you know Francis Crowley?

"Mr. Barenblatt: Yes.

"Mr. Kunzig: You do know him?

"Mr. Kunzig: You can hold that for a minute. I will get around to it in a minute. Now, did you hear Mr. Crowley testify this morning?

"Mr. Barenblatt: Yes, sir.

"Mr. Kunzig: You heard him identify Lloyd Barenblatt as a person he knew to have been a member of the Communist Party?

"Mr. Barenblatt: I believe I heard him to say, I believe his words were more in the way of saying that I was a member of the Haldane Club. I don't recall exactly his saying that I was a member in the Communist Party. However, I suppose the record will show that.

"Mr. Kunzig: The record shows the Haldane Club meant the Haldane Club of the Communist Party.

"Mr. Velde: And I think that was made clear in his pre- [fol. 109] vious testimony.

"Mr. Barenblatt: If the record so states, I don't remember, sir.

"Mr. Kunzig: It does. Now, were you a member of the Haldane Club of the Communist Party at Michigan?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

The Witness: Should I note the conferences between——

Mr. Hitz: I would like for you to read it all, yes.

The Witness: "Mr. Barenblatt: At this point I respectfully would like to object to the questions——

"Mr. Doyle: Mr. Chairman——

"Mr. Velde: All right. You have the floor.

"Mr. Doyle: Before the young man takes the time of the committee to read that, whatever it is, may I just urge you to think even more seriously than you have about whatever position you are going to take before this committee. I know you have competent counsel, and of course you should rely on him, possibly, but I anticipate you might be preparing yourself to take the position opposite to that of cooperation with the committee.

"I am in no position to give you legal advice, but I know from the record that you are an instructor in a certain [fol. 110] very distinguished college, by reputation, at least, and wouldn't it be a magnificent thing if you could take the position that if you ever were a member of the Communist Party, that you say so frankly and clean up and get out of that embarrassing situation and then start from there? Wouldn't that do you and the country a lot more good today——

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Doyle: Or put it on this basis. Wouldn't it do your country a lot more good?

"Mr. Barenblatt: I appreciate your concern, sir.

"Mr. Doyle: I am opening the door, for you, sir.

"Mr. Barenblatt: I understand, sir. However, I feel that this statement of objection which I am about to read might explain some things to the members of the committee.

"Mr. Doyle: Well, as a young man you can never say now that we haven't opened the door deliberately, and maybe I am embarrassed before the committee at this point——

"Mr. Velde: You certainly have given him every opportunity, Mr. Doyle, and I think he has had every oppor-

[fol. 111] tunity before to come clean. Let me say this about this statement you are about to read. You are familiar with the rules of this committee——

"Mr. Barenblatt: I believe so, sir.

"Mr. Velde: The committee made them some time ago. And are you familiar with Rule 9 concerning statements by witnesses?

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Velde: If not, let me read them again. (Reading:)

"'Any witness desiring to make a prepared or written statement for the record of the proceedings in executive or public sessions shall file a copy of such statement with the counsel of the committee within a reasonable period of time in advance of the hearing at which the statement is to presented.

"'All such statements so received which are relevant and germane to the subject of the investigation may upon approval at the conclusion of the testimony of the witness, by a majority vote of the committee or subcommittee members present be inserted in the official transcript of the proceedings.'

"It is my feeling, and I am sure the other members agree, [fol. 112] that your submitting the statement at the present time is not a reasonable time prior to the hearing. Now——

"Mr. Barenblatt: May I say this——

"Mr. Velde: Now, let me ask you one question. If you answer in the affirmative or in the negative, either one, then I believe that the committee would be very willing to let you read this statement. Are you not a member of the Communist Party?"

Mr. Hitz: That is Count One, Your Honor.

The Witness: "(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: Sir, this is an objection to the questions asked by the committee.

"Mr. Velde: I realize——

"Mr. Barenblatt: It is not a preliminary statement——

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: And I ask for leave to read the objections.

"Mr. Velde: It is assumed by the committee to be a preliminary statement. Now, will you answer the question if you are a member of the Communist Party at the present time?

[fol. 113] "(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: I object on the following grounds——

"Mr. Kunzig: Mr. Chairman, he is about to read an 11-page legal brief. This is obviously a delaying tactic.

"Mr. Velde: I am not going to let him do it. The committee will take the statement up in executive session and determine if it should be placed in the record.

"Mr. Barenblatt: But, sir, I believe I have a right to state my objections to the question. That is all I am doing.

"Mr. Velde: You will be given that right if you will answer the question in the affirmative or negative.

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: What is the question?

"Mr. Velde: Whether you are a member of the Communist Party at the present time.

"Mr. Barenblatt: May I confer with counsel?

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

[fol. 114] "Mr. Barenblatt: I object to this on the grounds that I will state and that I have handed to the committee.

"Mr. Walter: Never mind objecting. Do you decline to answer?

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: I do not decline to answer. I am objecting to the question.

"Mr. Velde: Then will you answer?

"Mr. Barenblatt: I am objecting to the question, sir. I wish that I might make that clear. I don't see what the trouble is about stating my grounds for objection. I notice that other witnesses have been able to do so, and I wish to claim the privilege——

"Mr. Kunzig: The other witnesses didn't decline to answer. Do you decline to answer?

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: I decline to answer——"

Mr. Wittenberg: May the record show that at that point the witness was interrupted by Mr. Velde and did not complete that sentence?

The Court: That is apparent from the record.

Mr. Wittenberg: As it is read it is sometimes said in-
[fol. 115] terruption and sometimes not.

The Witness: "Mr. Velde: Now, Mr. Witness, perhaps you are not familiar with the procedure before a congressional committee. It is entirely different than before a court of law. This is not a court of law. Your privileges are set up in the rules of the committee, and I assume you have a copy of the rules of the committee.

"Mr. Wittenberg: I have, sir.

"Mr. Velde: And we cannot have counsel putting the answers into the witness' mouth. You have a right to confer with your witness as far as his constitutional rights are concerned, but you have spoken loud enough to show that you are trying to get the witness to read this statement. Obviously——

"Mr. Wittenberg: Sir, that would be my advice to him.

"Mr. Kunzig: Now, he had started to say, Mr. Chairman, he declines to answer the question as to whether he is not a member of the Communist Party. Now, do you so decline on the grounds of the Fifth Amendment, among other things, in this statement?

"Mr. Barenblatt: I wish to confer with my counsel, please.

[fol. 116] "(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: I do not invoke the Fifth Amendment in declining to answer. I decline to answer on the grounds stated in my objections as presented to the members of this committee, which you have not allowed me to read.

"Mr. Walter: Now, may I inform you that you haven't the right to decline to answer by virtue of any decision of the court. It is because of the Constitution. Now, do you decline to answer because of the constitutional provision?

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: May I consult with counsel, sir?

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: I am declining to answer on constitutional grounds as stated in my objections.

"Mr. Velde: But you do not include the Fifth Amendment in your reasons in declining; is that right?

"Mr. Barenblatt: You are correct, sir.

"Mr. Kunzig: Are you stating in this document which [fol. 117] you have just handed to us, and which we have had no time to look at at all, that the Fifth Amendment is not included?

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: Not included in my list of objections.

"Mr. Kunzig: So you are declining to answer the question as to whether you are now a member of the Communist Party, and you are specifically not giving the Fifth Amendment as a reason for declining?

"Mr. Barenblatt: That is correct, sir.

"Mr. Kunzig: All right. Now, Mr. Chairman, I respectfully request that the witness be directed to answer the question: Are you now a member of the Communist Party?

"Mr. Velde: The witness is directed by the Chair to answer that question.

"Mr. Barenblatt: I would like to consult with counsel, sir.

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: I decline to answer on the following grounds: I, Lloyd Barenblatt, having been subpenaed before the Committee on Un-American Activities, by subpena [fol. 118] dated the 28th day of May 1954——"

The Witness: Interruption by Mr. Velde.

"Mr. Velde: Now, you have gone far enough with the statement. You are trying to read it into the record.

"Mr. Barenblatt: May I continue with my grounds——"

The Witness: Interruption.

"Mr. Velde: I say the statement is accepted by the committee and will be considered for insertion in the record. Now, proceed with your answer.

"Mr. Barenblatt: This is not a statement, not a preliminary statement. This is the grounds——

"Mr. Velde: Whatever you want to call it.

"Mr. Barenblatt: I would like to get it into the record.

"Mr. Velde: Whatever you want to call this, it is a statement of objections, it will be considered by the committee at a future time for insertion into the record. Now, will you answer the question?

"Mr. Barenblatt: May I consult with counsel?

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

"Mr. Barenblatt: I am objecting on these grounds, and I will not answer any questions about which the list of ob- [fol. 119] jections is read: my political beliefs; my religious beliefs; any other personal and private affairs; my associational activities.

"I will not answer any of those questions on the grounds of my objections in this statement which I again respectfully request that I be able to read at this point to get into the record the objections so that we can proceed from that point."

The Court: I think we will take our usual mid-afternoon respite at this time.

(Thereupon, a short recess was had.)

The Court: You may proceed, gentlemen.

The Witness: "Mr. Walter: We will spare you a lot of time. I have read this, so a member of the committee is well acquainted with what is in it. Now, let's proceed.

"Mr. Velde: I want to know this from the witness. In refusing to answer this question upon direction by the Chair, you are not relying upon the Fifth Amendment to the Constitution?

"Mr. Barenblatt: You are correct, sir.

"Mr. Velde: All right. Proceed.

"Mr. Kunzig: And at no time in this interrogation of you today, at no time in your appearance before the House Committee on Un-American Activities, are you relying on the [fol. 120] Fifth Amendment?

"Mr. Barenblatt: I can't make any statement about what might occur in the future, sir. All I can say at this point, I have no anticipation now of doing so.

"Mr. Doyle: At least today you are not relying on it, at this time?

"Mr. Barenblatt: All I can talk about is the present——

"(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Kunzig: Mr. Chairman, I respectfully request that since the witness has asked to be able to put this document into the record as his reason for not answering the question that he has been asked, which is, Are you now a member of the Communist Party, which he was directed to answer and which he refused again to answer, I respectfully request that this document be included in the record as his reason for not answering.

"Mr. Velde: Yes. I have not had an opportunity to read the full statement, but I am going to take the word of my colleague from Pennsylvania and my colleague from California, and without objection, at this point the objections or [fol. 121] statement, or whatever the witness wants to call it, will be inserted into the record as Barenblatt Exhibit No. 1."

Mr. Hitz: May we come to the bench, Your Honor?

The Court: Yes, indeed.

(At the Bench.)

Mr. Hitz: Your Honor, it appears to me that the jury issue here is whether or not there was a deliberate and an intentional refusal to answer with the reason why it was refused, if it was, being not material to the jury.

The Court: That is correct.

Mr. Hitz: Therefore, the only probative value that this statement that is now following in the printed record could possibly have, could be that it be for jury purposes.

The Court: This is a legal brief and I am not going to have it read to the jury.

Mr. Hitz: That is exactly my point. Its only value to the defendant as a jury question would be some how does it include an answer. It does not include an answer.

Furthermore, he states that his objection is made in the statement and that it is nothing but an objection. It is not an answer.

The Court: It is an objection to the jurisdiction of the committee. That is a legal question and counsel can argue it to the Court.

[fol. 122] I shall not permit it to be read to the jury. We do not read legal briefs to the jury.

Mr. Wittenberg: At this point it may be designated as a legal brief. It was part of the proceedings. It was referred to later on by the committee following at 5810, as a basis for the statement of objections, we read from Mr. Velde, there is a statement by Mr. Kunzig and then there is a statement by Mr. Barenblatt who sets forth that I certainly do not look upon myself as wilfully violating any rules.

It seems to me it certainly has a place in this proceeding not as a brief, but as the attitude which he took toward the committee and which the committee took toward him. It indicates what his attitude was.

The Court: Yes. But his attitude is not relevant. His attitude might become relevant in case the jury finds him guilty and then his attitude would be a matter that the Court could consider in connection with sentence whether his attitude was contumacious or respectful and so on. That has a bearing on that. But it does not have a bearing on his guilt, on the question of his guilt or innocence.

I am going to rule as I have done, as I did yesterday in another case, that there is no legal right to refuse to answer questions if they are pertinent, of course, merely to—on the ground that they inquire into a person's political beliefs or religious beliefs.

[fol. 123] There are occasions in some courts, for example, where a prospective juror is interrogated on voir dire examination concerning certain beliefs of his. He cannot decline to answer those questions on the ground that he is protected by the First Amendment.

The First Amendment grants the privilege of expressing one's views. It grants the privilege of having beliefs, but it does not grant the privilege of refusing to answer questions.

It is just the converse.

Mr. Wittenberg: Except, sir, if we were to read this we might see what has appeared—what has happened is an attempt to compel.

The Supreme Court has said that neither House is vested with power to compel disclosures. That goes beyond a mere question to speak.

The Court: That is a question of law that you can argue to the Court, it is not a question you can argue to the jury.

Mr. Wittenberg: I shall be bound, of course, by Your Honor's ruling.

The Court: The Court will be glad to hear you on that at the proper time.

You may have the witness omit the reading of the small print.

I was going to suggest this, anyway, Mr. Hitz; this is only by way of suggestion and not mandatory, because it may be [fol. 124] that, because I never like to curtain (sic) counsel's presentation of his own case in his own way, but it seems to me that all that is necessary is to read those parts of the transcript which involve these five questions. The fact that the questions were asked, that the witness declined, that having declined he was directed to answer, because the direction to answer is an essential part of the case; if there is no direction to answer then there is no contempt, and then an (sic) declination after direction.

That is all that you really need.

Mr. Hitz: I think that is true, but there is so little of it left.

The Court: I am not going to curtail you from reading the balance. There isn't too much left. As the witness was reading I got ahead of him, because, of course, you can read faster with your eyes than you can when you are reading out loud and I marked as I went along the matters bearing on each one of the five counts, and there isn't too much else left. I agree with you.

Mr. Hitz: It was my thought that rather than have the jury speculate that there might have been some attempt to answer in portions, also it would show a courteous and respectful treatment of the witness, which I think is well from the Government's point of view to put in.

Since there is not very much more I would like to go on [fol. 125] with that.

The Court: Very well.

Mr. Hitz: I would, however, like to bring this to the attention of all of us so that we can have a clear picture of what took place.

The statement made by Mr. Velde after the insertion here of this legal brief is as follows:

"Mr. Velde: Hereafter, when you decline to answer a question, you may make your declination, in order to save time, on the basis of the statement of objections previously made."

It might possibly be that if this statement were read by anyone in the presence of the witness and it became physically before all of them within the hearing of each, that the statement here, objections previously made, might refer to his legal brief as well as to his previous answers, and I think it might be well to determine whether or not that is true or not, for us to ask the witness whether this became a part of the question and answer that was before all of them or was it inserted here as a physical, mechanical proposition later on by a stenographer so that we can determine what it is that objections previously made in Velde's statement would refer to.

Mr. Wittenberg: I was there. It was received as Number One. The committee said they were reading. As a matter of [fol. 126] fact, Congressman Doyle from California——

The Court: I am wondering, gentlemen, whether or not it would not be better to omit that three line statement of Mr. Velde's?

Mr. Wittenberg: If you do that and then read Mr. Kunzig's statement, is it fair to the defendant?

The Court: Mr. Kunzig's statement is all right.

Mr. Wittenberg: Is that fair to the defendant? The record should also show—you do not show the previous statement.

The Court: Of course, you see, a witness refusing to give an answer, declining to answer questions, does not fortify his position by giving his reasons unless the reasons are legally sound, like declination to answer on the ground that the answer might incriminate the witness. But otherwise if the reasons are not legally sound, it makes no difference what the reasons are.

Mr. Wittenberg: What I am addressing myself to is the fact that Mr. Velde made a remark, then Mr. Kunzig. To read only Mr. Kunzig and then not to read——

Mr. Hitz: I will agree that they both go out.

The Court: I think that perhaps might be a good idea to have them both go out.

Mr. Hitz: And then commence at the top of Page 5811. That would be my suggestion.

[fol. 127] The Court: Very well.

Mr. Wittenberg: There is something else here we might save time about and that is that while he is on there is this portion of Crowley's testimony right at the start with regard to Mr. Barenblatt, two points Mr. Crowley testified with regard to Mr. Barenblatt and at one point, I believe the final witness of the day, also.

The Court: I do not understand you are going to read anything but the defendant's testimony.

Mr. Hitz: I had not planned to.

Mr. Wittenberg: Since they may be relevant, since these are the only two references in this record to Barbeblatt, (sic) they might go not only to pertinency, but also as to what his attitudes were; not in the objection to testify, but generally with regard to the questioning.

I think the testimony of Lucas and Crowley on the same——

The Court: The reason why the Court is admitting the

transcript of the defendant's testimony before the committee is because that is proof of the fact that he was asked certain questions and refused to answer them.

Mr. Wittenberg: Wouldn't you regard a question asked of Mr. Crowley that was referred to in his testimony he is asked do you know a Mr. Crowley.

The Court: No. That is not the question, you see. The question that he refused to answer is did you know Francis [fol. 128] Crowley as a member of the Communist Party, which is entirely different from saying do you know.

Mr. Wittenberg: What I am saying, sir, is that Crowley testified before and this may become germane to certain questions which I think are in the case, testified that he was not a member of the Communist Party.

The Court: If it becomes germane, if it becomes germane on the issue of pertinency the Court will consider it. If it becomes germane on any issue that the defense properly has a right to bring before the jury, why then the defense may read it as part of its case.

Mr. Wittenberg: He has been asked, while they were reading this testimony, they said didn't Mr. Crowley testify this morning that you were.

The Court: I am not going to require the Government to read Crowley's testimony as part of its case. But if you feel that it should be part of your case then I will let you read it as part of the defense case provided it appears proper.

Mr. Hitz: Mr. Wittenberg, you, of course, do not contend that this Barenblatt Exhibit Number One contains what the jury could possibly find was a responsive answer to the question. It is merely a statement of objections as Mr. Barenblatt said it was. Is that not true?

Mr. Wittenberg: No. I am not prepared to say that a witness appearing before a congressional committee may [fol. 129] not be making a perfectly responsive answer to it and the committee recognized that there were constitutional questions involved, they told him.

The Court: I am not going to submit constitutional questions to the jury for determination. There is only one State in the Union where you can argue law to the jury, that is Maryland.

Mr. Wittenberg: I was saying whether or not this was a

responsive, or an attempt to give a responsive answer to the question.

The Court: I hereby rule it was not responsive because the witness, the record shows the witness declined to answer, and that these objections were reasons, really, for not answering and whether the reasons were valid or not is a question of law that the Court has to determine.

Mr. Wittenberg: Suppose I appeared before a committee and I were validly trying to present to the committee a reason why I thought might activate the committee with response to my own answers. In other words, I did not want to be contumacious but I did want to give the committee grounds which I thought might be available to them and they might withdraw the question.

The Court: Oh, yes.

Mr. Wittenberg: I think I would have a right, then, to put that in as indicating my willingness to discuss with the [fol. 130] committee the questions which were being asked.

The Court: If the committee says we refuse to hear you, your reasons, we refuse to hear anything from you, you will, we direct you to answer the question, and the witness says I decline to answer. That is all the Court needs to have before it.

Mr. Wittenberg: These questions I am not going to argue with you, were not repeated after this was accepted into the record.

The Court: I am not going to have that read because that brings in a lot of extracts from legal opinions to the jury and if I let that be read why then, of course, I would have to let Mr. Hitz read a lot of opinions the other way and I am not going to let him do that, either.

Mr. Wittenberg: This occurred with the committee. This did not occur de hors the committee.

The Court: Suppose the committee had allowed you, as counsel, to make a legal argument?

Mr. Wittenberg: That would not be permissible.

The Court: It is the same sort of thing. This was obviously a document prepared by a lawyer—perhaps by you, it is a very well prepared document, it reviews a great deal of authorities in support of your position, but it does not review the authorities that hold the other way.

Well, we will proceed, gentlemen.

[fol. 131] (In Open Court)

By Mr. Hitz:

Q. Mr. Appell, will you commence reading, now, on Page 5811 at the top.

The Witness: "Mr. Barenblatt: May I say at this point, this is not my statement. It is my setting forth of my objections as the question is asked me before the committee. I wish to comply with all the rules——"

The Court: I am going to ask counsel to come back to the bench another moment.

(At the Bench)

The Court: I do not see the relevancy, Mr. Hitz, of the whole discussion of Page 5811.

Mr. Hitz: All right, sir. I certainly do not urge it. My only thought was completeness and if it has no value——

The Court: There has already been declination and there was discussion back and forth. I venture to suggest that you have the reading resume on Page 5812, with the fourth line.

Mr. Hitz: Yes, Your Honor. I will be glad to do that.

(In Open Court)

By Mr. Hitz:

Q. Mr. Appell, it has been determined that we shall begin reading to the jury now beginning Page 5812, the fourth line; will you read there.

[fol. 132] The Witness: "Mr. Kunzig: Have you ever been a member of the Communist Party?"

Mr. Hitz: That is Count Number Two, Your Honor.

The Witness: "I must object to that question on the grounds previously put into the record.

"Mr. Kunzig: You may just say the same grounds and we will understand it to mean this document which is Barenblatt Exhibit No. 1.

"Mr. Barenblatt: Yes, sir; exhibit 1, sir.

"Mr. Velde: All right. Now, Mr. Witness, you are directed to answer that question.

"Mr. Barenblatt: I decline to answer on the basis of the grounds stated in Exhibit 1.

"Mr. Kunzig: Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?

"Mr. Barenblatt: I must decline to answer that question, sir, on the grounds as stated in my objections in Exhibit 1."

Mr. Hitz: That is Count Three, Your Honor.

The Witness: "Mr. Kunzig: Now, you don't have to do it. You said you must. Do you decline to answer?

"Mr. Barenblatt: I do, sir.

"Mr. Kunzig: I respectfully ask that he be directed on each of these questions, Mr. Chairman.

[fol. 133] "Mr. Velde: Yes. You are directed to answer the question propounded by counsel.

"Mr. Barenblatt: The same question; I object on the grounds as previously stated in the exhibit.

"Mr. Kunzig: Do you decline to answer?

"Mr. Barenblatt: I decline to answer.

"Mr. Kunzig: Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?"

Mr. Hitz: That is Count Four, Your Honor.

The Witness: "Mr. Barenblatt: I decline to answer on the grounds as previously stated.

"Mr. Velde: You are directed to answer that question, Mr. Witness.

"Mr. Barenblatt: Sir, I respectfully decline to answer on the basis of the grounds as previously stated.

"Mr. Kunzig: Were you a member while a student of the University of Michigan Council of Arts, Sciences and Professions?"

Mr. Hitz: That is Count Five, Your Honor.

The Witness: "Mr. Barenblatt: I again decline to answer on the basis of the objections made in Exhibit 1.

"Mr. Velde: You are again directed to answer that ques-
[fol. 134] tion, Mr. Barenblatt.

"Mr. Barenblatt: I must decline to answer these questions, sir, on the basis of the grounds as previously stated.

"Mr. Kunzig: Let the record show, of course, that the National Council of Arts, Sciences, and Professions is a cited Communist-front organization.

"Now, I want to go back to one point, Mr. Barenblatt. Would you please give the committee a brief resumé of your employment background?

The Court: I wonder if there is any purpose in reading that, Mr. Hitz?

Mr. Hitz: From here on?

The Court: From here on toward the middle of Page 5813 where the witness describes his various appointments.

Mr. Hitz: I do not think that has any relevancy in particular, Your Honor.

The Court: I would think, then, resume reading at the middle of 5813, where it says Mr. Kunzig continuing.

The Witness: "Mr. Kunzig: I want to ask one thing further, just so the record can be completely clear——"

The Witness: Interruption.

"Mr. Barenblatt: Yes, sir.

"Mr. Kunzig: (continuing). And so there can be no doubt in the written record at all. You have not at any time [fol. 135] this afternoon during your testimony before this committee in any way sought to invoke or raise the Fifth Amendment whatsoever up to the present moment, have you?

"Mr. Barenblatt: You are entirely correct, sir.

"Mr. Velde: Mr. Walter?

"Mr. Walter: No.

"Mr. Velde: Mr. Doyle?

"Mr. Doyle: Mr. Chairman, I think the record should show that at this time there are pending before the United States Congress several active bills dealing with the question of subversive activities, dealing with the question of the Communist Party, dealing with the question of the responsibility that we have as a congressional committee under Public Law 601. I am sure that is in the record, and I would like the record of this hearing of this committee to especially show it——

"Mr. Velde: Yes, I think——

"Mr. Doyle: (continuing) And that this witness and

these other witnesses could help us in line with our Public Law 601——"

Mr. Wittenberg: Would the Court hear me in view of the fact that Your Honor has limited the reading to certain matter?

[fol. 136] The Court: I do not hear you.

Mr. Wittenberg: Does Your Honor not agree with me, in view of the exclusion of the previous matter, that these statements do not properly belong?

The Court: They are not proper to go before the jury.

Mr. Hitz: I think that is probably true. They do not bear on any issues the jury has to determine. I won't oppose a motion to strike that part that has already been read.

The Court: Very well.

Wittenberg: We so move.

The Court: The motion is granted.

Mr. Hitz: May Mr. Wittenberg indicate where he thinks the motion to strike should first be effective?

Mr. Wittenberg: Stopping after the line of Mr. Barenblatt, "You are entirely correct, sir." Which is right following Mr. Kunzig's question, that you have not at any time during your testimony sought to invoke or raise the Fifth Amenment (sic) whatsoever up to the present time.

Mr. Hitz: You would like to strike all after Mr. Barenblatt's answer.

Mr. Wittenberg: Statement, "You are entirely correct."

Mr. Hitz: We have no objection to that motion to strike.

The Court: The motion is granted.

Mr. Hitz: Now, Mr. Appell, we will see if there is anything worth adding at the conclusion of this. I do not [fol. 137] think any of the remaining testimony of Mr. Barenblatt bears upon jury issues.

The Court: I do not think so.

Mr. Wittenberg: We do not ask that any further of it be read.

The Court: Very well.

By Mr. Hitz:

Q. Mr. Appell, was that all of the testimony that Mr. Barenblatt gave, such of it as is contained on 5813 and 5814

which we are omitting? He did not testify again, in other words, did he?

A. Not to my knowledge.

Q. Did you make an investigation of the Michigan Council of Arts, Sciences and Professions?

A. It was known as the University of Michigan Chapter.

Q. The University of Michigan Chapter of it?

A. I did.

Mr. Hitz: I have no further questions of Mr. Appell.

The Court: Any cross-examination?

Mr. Wittenberg: No cross-examination.

The Court: You may step down.

(Witness left stand.)

Mr. Hitz: Your Honor, I have nothing further for the jury. I wonder if I could be heard in the absence of the jury on one subject which——

[fol. 138] The Court: We will excuse the jury for the day. Ladies and gentlemen of the jury, your presence will not be needed any further today, so that you may leave at this time and please be back in your seats in the jury box a few minutes before ten o'clock tomorrow morning because when we recess a little later we will recess until ten o'clock tomorrow morning.

(Thereupon, at 3:35 o'clock p.m. the jurors withdrew.)

Mr. Hitz: It is in the nature of evidence. I need to ask Mr. Appell a couple of questions.

The Court: Let the record show that the hearing out of the presence of the jury is being resumed.

Mr. Hitz: Yes, Your Honor.

Thereupon DONALD T. APPELL resumed the witness stand and, having been previously duly sworn, was further examined and testified as follows:

Q. Mr. Appell, did you make an investigation of the University of Michigan Chapter of the Council of Arts, Sciences and Professions?

A. I did.

Q. What did you learn with respect to any connections that that organization had with any subversive organization if any?

Mr. Wittenberg: That is objected to as being both hearsay [fol. 139] and calling for the conclusion of the witness.

The Court: It is obviously hearsay and therefore that would not be admissible to prove any fact concerning this organization, and if the purpose of the testimony were to prove any fact concerning the organization the Court would exclude it.

On the other hand, if the purpose of the Government is to merely establish the fact that the committee had reason to believe, or grounds for investigating that organization, if that is the purpose of the testimony, then the Court would admit it.

The Court would like to ascertain from you, Mr. Hitz, as to what the purpose of this question is?

Mr. Hitz: The purpose is to establish that the committee, the Un-American Activities Committee had some information concerning subversive infiltration of this organization such that it desired to ask this man questions concerning it and membership in it.

The Court: In other words, it goes to the issue of pertinency.

Mr. Wittenberg: Yes, Your Honor.

The Court: I am going to admit the evidence soley (sic) for that limited purpose, it being understood that it is not being admitted as proof of the fact, but merely as proof of what reason the committee had for asking questions con- [fol. 140] cerning the organization. Just as we have occasion to admit hearsay testimony to prove reasonable ground for making an arrest, to take an example out of a different field, and yet that hearsay testimony would not be proof of the defendant's guilt.

It is along the same line that I am admitting that testimony and only for that limited purpose. You may answer.

The Witness: The University of Michigan Chapter of the Arts, Sciences and Professions was a campus organization which was required to register with the Dean of Men at the University of Michigan.

From the records of the Dean of Men at the University of Michigan the committee obtained the membership list of the University of Michigan Chapter of the Arts, Sciences and Professions and from an investigation of the individuals that were officers and directors of that organization the committee determined that it was under the control of a majority of its—a majority of its officers were members of subversive organizations of the Communist Party.

The Court: You mean that the committee had reason to believe. The committee cannot make any determination, it is not a court.

The Witness: That is right, sir. And the University of Michigan, after finding that a great many of the members of the University of Michigan Chapter of the Arts, Sciences and Professions were comprised of graduate students or [fol. 141] faculty members or townspeople of the city of Ann Arbor declared it not to be a student organization and ruled it off of the campus as a student organization which it has been originally recognized as.

Mr. Hitz: No further questions, Your Honor, of this witness.

Mr. Wittenberg: No cross.

Mr. Hitz: May he be excused?

The Court: I think he—he is not leaving the city, is he?

Mr. Hitz: No, Your Honor.

The Court: He may be excused subject to call. He should be on hand in case either side wants him.

Do you have anything further, Mr. Hitz?

Mr. Hitz: Would Your Honor indicate whether the Court will sit any longer this afternoon?

The Court: It was not the Court's intention unless you have something that is very brief.

Mr. Hitz: I do not have. Unless the Court is not going to sit, I prefer not to announce that we have rested, but I expect to rest the first thing in the morning.

The Court: I see. You will make copies of those exhibits available to defense counsel so that defense counsel can read them overnight?

Mr. Hitz: I will, Your Honor.

[fol. 142] The Court: We will recess until ten o'clock tomorrow morning.

(Thereupon at 3:40 o'clock p.m. the trial was adjourned to reconvene at 10:00 o'clock a.m., Thursday, March 15, 1956.)

(Reporter's certificate to foregoing transcript omitted in printing.)

[fol. 145] PROCEEDINGS

The Deputy Clerk: The United States v. Lloyd Barenblatt.

Mr. Wittenberg: Might we come to the bench before the jury comes in?

The Court: Yes.

(At the bench:)

DEFENDANT'S WAIVER OF TRIAL BY JURY AND ACCEPTANCE THEREOF

Mr. Wittenberg: Your Honor, we have been considering the matter here and we feel that all things considered, in view of the reservations with regard to what could go to the jury, and the simple issue that could go to the jury, that we might save the Court's time, and a considerable amount of ours, if we were from now on waiving the jury and proceeding before Your Honor and allow you to determine the entire issue of fact.

The Court: Very well.

Mr. Hitz: We would agree to that.

The Court: Very well. Suppose you sign the usual waiver.

Mr. Wittenberg: Should I have the defendant sign that?

The Court: Yes. We have a blank form.

(Counsel having returned to trial tables, and the jury now being in the box:)

[fol. 146] The Court: Lloyd Barenblatt, will you rise, please.

You understand that you are entitled to a trial by jury.

The Defendant: Yes, sir.

The Court: And is the Court correctly informed that it is your desire at this time to waive your right to a trial by jury and to have the case proceed as a trial by the Court?

The Defendant: Yes, Your Honor.

The Court: The Court will accept the waiver.

Ladies and gentlemen of the jury, the defendant has waived his right to a trial by jury and desires to have this case proceed by trial by the Court alone. Under the circumstances you are relieved of further responsibility in this case and you may resume your seats in the courtroom.

(The jurors accordingly withdrew from the box and took seats in the courtroom.)

The Court: I wish to state to counsel that I have re-read very carefully the Bryan case. Of course, the majority opinion in that case is a little difficult to comprehend, because they refused to overrule the Christoffel case, and I don't think there is any difference in principle between the Christoffel case and the Bryan case, because the distinction between perjury before a Congressional committee and [fol. 147] contempt before a Congressional committee is a factual distinction only, not in principle.

However, the Bryan case is the later of the two cases. So to my mind it overruled the Christoffel sub silentio. Moreover, I am impressed by the fact that although there were several opinions in this case, none of the Justices dissented on this particular point, so that there was no difference of opinion on this particular point.

I might candidly say I am impressed by Mr. Justice Jackson's opinion, who said "We ought in all frankness overrule the Christoffel case, because that is what we are doing, and we ought to say we are doing it."

I have always been a great admirer of the way Mr. Justice Jackson's intellect worked.

But anyway, so far as this Court is concerned, it is bound by the rule of law or the law as laid down by the Supreme Court or the Court of Appeals. Therefore I shall hold that the question of quorum is not in issue in this case at this trial. Of course I might add that there has been prima facie evidence of a quorum.

I might also say that overnight the Court has read those

passages in the exhibits bearing on the issue of pertinency on which the Government relies.

Very well. You may proceed, gentlemen.

Mr. Hitz: The Government rests, Your Honor.

[fol. 148] Mr. Wittenberg: The defendant rests.

. . . . . .

[fol. 189] FINDING BY THE COURT

The Court: . . .

. . . . . .

[fol. 192] In the light of all the evidence, the Court finds the defendant guilty on all counts.

. . . . . .

[fol. 199] SENTENCE

The Court: Let the defendant come forward.

Lloyd Barenblatt, is there anything you would like to say before sentence is imposed?

The Defendant: I have nothing to say, Your Honor.

The Court: Lloyd Barenblatt, it is the judgment of this Court that you be imprisoned in an institution to be designated by the Attorney General of the United States for a term of six months and that you be fined $250.00, and that you stand committed until the fine is paid.

Mr. Wittenberg: Will Your Honor continue the bail in which the defendant now is, pending appeal?

[fol. 200] The Court: Yes indeed. I don't believe the Government objects to that.

Mr. Hitz: It is our practice not to object to that in this type of case.

The Court: The defendant may remain on bail pending appeal.

(Accordingly at 2:30 p.m. the instant proceedings were concluded.)

(Reporter's certificate to foregoing transcript omitted in printing.)

[fol. 202] GOVERNMENT'S EXHIBIT No. 2

H. Res. 5

[Rubber Stamp—Filed Apr 27 1956 Harry M. Hull, Clerk]

In the House of Representatives, U. S.,
January 3, 1953.

Resolved, That the following be, and they are hereby, adopted as the rules of the Eighty-third Congress:

• • • • • • • •

[fol. 209] RULE X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress, the following standing committees:

• • • • • • • •

[fol. 210] (q) Committee on Un-American Activities, to consist of nine Members.

• • • • • • • •

[fol. 211] RULE XI

POWERS AND DUTIES OF COMMITTEES

All proposed legislation, messages, petitions, memorials, and other matters relating to the subjects listed under the standing committees named below shall be referred to such committees, respectively:

• • • • • • • •

[fol. 225] 17. Committee on Un-American Activities.

(a) Un-American activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and [fol. 226] objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in

relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

• • • • • • •

[fol. 272] GOVERNMENT'S EXHIBIT No. 4

House Clerk's Certificate (omitted in printing).

[fol. 273]

83D CONGRESS *2d Session*	HOUSE OF REPRESENTATIVES	REPORT No. 2457

PROCEEDINGS AGAINST LLOYD BARENBLATT

JULY 23, 1954.—Ordered to be printed

Mr. VELDE, from the Committee on Un-American Activities submitted the following

REPORT

CITING LLOYD BARENBLATT

The Committee on Un-American Activities, as created and authorized by the House of Representatives through the

enactment of Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 83d Congress, caused to be issued a subpena to Lloyd Barenblatt, Shady Creek Road, Pleasant Valley, Poughkeepsie, N. Y. The said subpena directed Lloyd Barenblatt to be and appear before said Committee on Un-American Activities at the hour of 10:30 a. m., on June 28, 1954, then and there to testify touching matters of inquiry committed to said committee, and not to depart without leave of said committee. The subpena served upon said Lloyd Barenblatt is set forth in words and figures, as follows:

> By authority of the House of Representatives of the Congress of the United States of America, to George E. Cooper: You are hereby commanded to summon Lloyd Barenblatt to be and appear before the Committee on Un-American Activities, or a duly authorized subcommittee thereof, of the House of Representatives of the United States, of which the Hon. Harold H. Velde is chairman, in their chamber in the city of Washington, room 225-A, Old House Office Building, on Monday, June 28, 1954, at the hour of 10:30 a. m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.
>
> Herein fail not, and make return of this summons.
>
> Witness my hand and the seal of the House of Representatives of the United States, at the City of Washington, this 28th day of May, 1954.
>
> HAROLD H. VELDE, *Chairman.*
>
> Attest: LYLE O. SNADER,
> *Clerk, House of Representatives of the United States.*
>
> [SEAL]

The said subpena was duly served as appears by the return made thereon by George E. Cooper, investigator, who was duly authorized to serve the said subpena. The return of the service by the said George E. Cooper, being [fol. 274] endorsed thereon, is set forth in words and figures, as follows:

Subpena for Lloyd Barenblatt before the Committee or Un-American Activities for the House. Served in person Friday, June 4, 1954, 11:15 a. m. at his home, Shady Creek Rd., Pleasant Valley, Poughkeepsie, N. Y.

GEORGE E. COOPER,
Investigator, House of Representatives.

The said Lloyd Barenblatt, pursuant to said subpena and in compliance therewith, appeared before the said committee on June 28, 1954, to give such testimony as required under and by virtue of Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 83d Congress. The said Lloyd Barenblatt having appeared as a witness and having been asked the questions, namely:

Are you now a member of the Communist Party?

Have you ever been a member of the Communist Party?

Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?

Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?

Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions?

which questions were pertinent to the subject under inquiry, refused to answer such questions; and as a result of Lloyd Barenblatt's refusal to answer the aforesaid questions, your committee was prevented from receiving testimony and information concerning a matter committed to said committee in accordance with the terms of the subpena served upon the said Lloyd Barenblatt.

The record of the proceedings before the committee on June 28, 1954, during which the said Lloyd Barenblatt refused to answer the aforesaid questions pertinent to the subject under inquiry, is set forth in fact as follows:

UNITED STATES HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE COMMITTEE ON
UN-AMERICAN ACTIVITIES,
Washington, D. C., Monday, June 28, 1954.

PUBLIC HEARING

A subcommittee of the Committee on Un-American Activities, continued its hearing at 3:30 p. m., on June 28, 1954, in the caucus room, Old House Office Building, the Honorable Harold H. Velde, chairman, presiding. During the interrogation of another witness, Hon. Harold H. Velde, committee chairman, appointed a subcommittee to be composed of himself as chairman, and Representatives Francis E. Walter, Morgan M. Moulder, and Clyde Doyle. At a point preceding the testimony of Lloyd Barenblatt, Representative Morgan M. Moulder left the room, thus leaving a quorum of the subcommittee present, consisting of Representatives Harold H. Velde, chairman, Francis E. Walter, and Clyde Doyle.

* * * * * * *

Mr. Velde. Mr. Reporter, for the purposes of this hearing, let the record show that I have appointed Mr. Walter, Mr. Moulder, Mr. Doyle, and myself as chairman.

* * * * * * *

Mr. Kunzig. Mr. Lloyd Barenblatt.

Mr. Velde. In the testimony you are about to give before this subcommittee do you solemnly swear you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Barenblatt. I do.

Mr. Velde. Be seated.

NOTE: Petitioner's testimony of June 28, 1954, before the House Committee on Un-American Activities (including the document entitled "Barenblatt Exhibit No. 1," consisting of petitioner's formal statement of his objections to the Committee's questions) follows at this point. Since this testimony (including this document) also appears in Gov-

ernment Exhibit 8 (the transcript of the Hearings of that date) and is printed elsewhere herein (infra, pp. 218-241), it is omitted from the printing at this point.

• • • • • • •

[fol. 284] Because of the foregoing, the said Committee on Un-American Activities was deprived of answers to pertinent questions propounded to the said Lloyd Barenblatt relative to the subject matter which, under Public Law 601, section 121, subsection (q) (2) of the 79th Congress, and under House Resolution 5 of the 83d Congress, the said committee was instructed to investigate, and the refusal of the witness to answer the questions, namely:

> Are you now a member of the Communist Party?
>
> Have you ever been a member of the Communist Party?
>
> Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?
>
> Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?
>
> Were you a member while a student at the University of Michigan Council of Arts, Sciences and Professions?

which questions were pertinent to the subject under inquiry, is a violation of the subpena under which the witness had previously appeared, and his refusal to answer the aforesaid questions deprived your committee of necessary and pertinent testimony and places the said witness in contempt of the House of Representatives of the United States.

[fol. 285] GOVERNMENT'S EXHIBIT No. 5

H. Res. 666

In the House of Representatives, U. S.,
July 23, 1954.

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American

Activities of the House of Representatives as to the refusal of Lloyd Barenblatt to answer questions before the said Committee on Un-American Activities, together with all of the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that the said Lloyd Barenblatt may be proceeded against in the manner and form provided by law.

Attest:

/s/ LYLE O. SNADER
Clerk.

[SEAL]

[Rubber Stamp—Filed Apr 27 1956 Harry M. Hull, Clerk]

[fol. 286] GOVERNMENT'S EXHIBIT No. 6

JOSEPH W. MARTIN, JR.
14TH DIST., MASSACHUSETTS

THE SPEAKER'S ROOMS
HOUSE OF REPRESENTATIVES
WASHINGTON, D. C.

The United States Attorney,
District of Columbia.

The undersigned, the Speaker of the House of Representatives of the United States, pursuant to House Resolution 666, Eighty-third Congress, hereby certifies to you the refusal of Lloyd Barenblatt to answer questions before the Committee on Un-American Activities of the House of Representatives conducting an investigation authorized by Public Law 601, Seventy-ninth Congress, and House Resolution 5 of the Eighty-third Congress, as is fully shown by the certified copy of the report (House Report 2457) of said committee which is hereto attached.

Witness my hand and the seal of the House of Representatives of the United States, at the City of Washington, District of Columbia, this twenty-third day of July 1954.

/s/ JOSEPH W. MARTIN, JR.
Speaker of the House of Representatives

Attest

/s/ LYLE O. SNADER
Clerk of the House of Representatives

[SEAL]

[Rubber Stamp—Filed Apr 27 1956 Harry M. Hull, Clerk]

[fol. 287] GOVERNMENT'S EXHIBIT No. 7

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HEARINGS

BEFORE THE

COMMITTEE ON UN-AMERICAN ACTIVITIES

HOUSE OF REPRESENTATIVES

EIGHTY-THIRD CONGRESS

FIRST SESSION

FEBRUARY 25, 26, AND 27, 1953

Printed for the use of the Committee on Un-American Activities

[fol. 288]

COMMUNIST METHODS OF INFILTRATION (EDUCATION)

WEDNESDAY, FEBRUARY 25, 1953

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D.C.

The Committee on Un-American Activities met, pursuant to notice, at 10:35 a. m., in the caucus room, Old House Office Building, Hon. Harold H. Velde (chairman) presiding.

Committee members present: Representatives Harold H. Velde (chairman), Bernard W. Kearney, Donald L. Jackson, Kit Clardy, Gordon H. Scherer, Francis E. Walter, Morgan M. Moulder, Clyde Doyle, and James B. Frazier, Jr.

Staff members present: Frank S. Tavenner, Jr., committee counsel; Thomas W. Beale, Sr., chief clerk; Louis J. Russell, chief investigator; Raphael I. Nixon, director of research; Donald T. Appell and Earl L. Fuoss, investigators.

Mr. Velde. The committee will come to order.

Let the record show that all of the committee members are present and a quorum of the full committee is present for the purposes of this hearing.

Mr. Counsel, do you have a witness?

Mr. Tavenner. I don't see the witness present. Mr. Robert Gorham Davis.

(Discussion off the record.)

Mr. Velde. Mr. Davis, will you raise your right hand?

In the testimony you are to give before this committee do you solemnly swear you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Davis. I do.

Mr. Velde. Mr. Davis, it is our understanding that you are a member of the teaching profession. In opening this hearing, it is well to make clear to you and others just what the nature of this investigation is.

From time to time, the committee has investigated Communists and Communist activities within the entertainment, newspaper, and labor fields, and also within the professions and the Government. In no instance has the work of the committee taken on the character of an investigation of entertainment organizations, newspapers, labor unions, the professions, or the Government, as such, and it is not now the purpose of this committee to investigate education or

educational institutions, as such. The committee will follow its long-established policy of investigating Communists and Communist activities wherever it has substantial evidence of its existence.

[fol. 289] When investigating Communists and Communist activities within certain labor unions, the committee was met with the charge by alarmists and partisans within that field that the committee was a group of Fascists and the enemy of labor, and that the real purpose of the investigation was to destroy labor unions. Similar and equally unfounded charges have been made with regard to this hearing. In pursuing its work within the field of labor, the committee carefully refrained from taking any part in any internal disputes within labor or any disputes between employers and employees and confined its activities to the ascertainment and identification of leaders in the labor unions who were members of the Communist Party and were using their influence to promote the objectives of the Communist Party within the field of labor, and to the character, extent, and objects of their Communist Party activities. The work of the committee in this respect has met with such growing success that many labor unions are now actively engaged in eliminating from positions of influence union officials known to be members of the Communist Party and engaged in Communist activities.

The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field.

The committee is charged by the Congress with the responsibility of investigating the extent, character, and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

It has been fully established in testimony before congressional committees and before the courts of our land that

the Communist Party of the United States is part of an international conspiracy which is being used as a tool or weapon by a foreign power to promote its own foreign policy and which has for its object the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence, if necessary. This organization cannot live except by the promulgation and diffusion of subversive and un-American propaganda and in the view of this committee every person who remains a member of it is contributing to the ultimate accomplishment of its objectives. Communism and Communist activities cannot be investigated in a vacuum. The investigation must, of necessity, relate to individuals and, therefore, this morning the committee is calling you as a person known by this committee to have been at one time a member of the Communist Party.

The question is sometimes asked whether it is necessary to call as witnesses those who are no longer members of the Communist Party. It is quite obvious for a number of reasons that the answer should be "Yes." Such witnesses add immeasurably to the sum total of the knowledge of the character, extent, and objects of Communist activities. The testimony of former Communist Party members resulted virtually in immobilizing the Communist Party in Hollywood. These witnesses considered it their patriotic duty to answer under oath questions relating to their knowledge [fol. 290] of Communist infiltration into the organizations of which they had been members, and to their knowledge of other Communist Party activities. Witnesses from the Screen Writers' Guild, the directors' guilds, labor unions, the legal profession, the medical profession, and other groups have made a great contribution to the defense of their country by disclosing to this committee facts within their knowledge.

Former Communist Party membership, in the view of the committee, should not be held against an individual whose testimony admitting former Communist Party membership has that character of trustworthiness which convinces one that he has completely and finally terminated his Communist Party membership and has been given in all good

faith. It is of great aid in determining who remain in the Communist Party to ascertain who have left it.

The committee was greatly concerned with the evidence developed in the Hollywood hearings with respect to the type of "thought control" practiced by the Communist Party upon its members. Screen writers were told how and what they should write. The testimony of Budd Schulberg and Edward Dmytryk demonstrate the point as clearly as laboratory experiments would prove a chemical reaction. The same influence was found to exist in the field of art and music. An objective study of this testimony will lead to the inescapable conclusion that it is the Communist Party which is the enemy of academic freedom.

The committee is equally concerned with the opportunities that the Communist Party has to wield its influence upon members of the teaching profession and students through Communists who are members of the teaching profession. Therefore, the objective of this investigation is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.

Proceed, Mr. Tavenner.

Testimony of Robert Gorham Davis

Mr. Tavenner. Mr. Davis, will you state your full name, please?

Mr. Davis. Robert Gorham Davis.

Mr. Tavenner. Now when and where were you born, Mr. Davis?

Mr. Davis. In Cambridge, Mass., June 8, 1908.

Mr. Tavenner. How are you now employed?

Mr. Davis. I teach at Smith College.

Mr. Frazier. Mr. Chairman.

Mr. Velde. Mr. Frazier.

Mr. Frazier. I want to ask Mr. Davis whether or not he wants to be represented by counsel. I think we should ask him—or whether he had counsel.

Mr. Velde. All right. Ascertain that, Mr. Counsel.

Mr. Tavenner. Do you have counsel present with you in the hearing room?

Mr. Davis. No; I do not.

Mr. Tavenner. It is the practice of the committee to encourage the use of counsel by witnesses if they desire. So I would like to ask you if you desire counsel present?

Mr. Davis. No; I do not.

[fol. 291] Mr. Tavenner. Will you state to the committee, please, what your educational training has been?

Mr. Davis. I was educated in the public schools of Cambridge; went to Harvard as a scholarship student in the class of '29; received my master's degree in 1930; returned to Harvard for further graduate work in 1933.

Mr. Tavenner. How long did you remain at Harvard in 1933, when you went there in 1933?

Mr. Davis. I taught 10 years until 1943.

Mr. Tavenner. I want to ask you at this stage whether you object to the cameras, the photographs that are being taken, and I believe the movies which are being taken?

Mr. Davis. No; I do not.

Mr. Clardy. You understand you have a perfect right to do so if you wish?

Mr. Davis. Yes.

Mr. Tavenner. Will you state, please, what your employment has been since the completion of your education?

Mr. Davis. I taught at Rensselaer Polytechnic Institute from 1930 to 1933; was an assistant at Harvard from 1933 to 1934; an instructor from 1934 to 1940; a faculty instructor from 1940 to 1943. I went to Smith as a visiting lecturer and was made an associate professor in 1945 and full professor in 1952.

Mr. Tavenner. Professor Davis, are you now a member of the Communist Party?

Mr. Davis. I am not.

Mr. Tavenner. Have you ever been a member?

Mr. Davis. Yes.

Mr. Tavenner. Will you tell the committee, please, the circumstances under which you became a member; how long you remained a member; and the circumstances under which you left the party?

Mr. Davis. I joined the Communist Party in January of 1937. I left the Communist Party in the fall of 1939, after the pact between the Germans and the Russians.

Mr. Tavenner. Since 1939 have you consistently been an opponent of the Communist Party?

Mr. Davis. I have.

Mr. Tavenner. Now will you state more in detail the circumstances under which you became a member of the party?

Mr. Davis. Do you wish to know the influences that led me to join?

Mr. Tavenner. Yes. I think we should have the entire picture for the benefit that it may be to others.

Mr. Davis. Well, I should say that ideologically there were three elements: First, the fact of the depression. To my generation it seemed intolerable that men should be unemployed; that food and cotton should be destroyed while people were hungry in a country as advanced technologically as the United States, and with such tremendous natural resources. We sought to understand the reason for the depression, for the waste of human and natural resources, and were led because of the spirit of the thirties to concern ourselves with the Marxist explanation.

One reason why Marxism appealed to my generation is because we were products of the twenties, educationally—a period of uncertainty and skepticism. Marxism seemed to offer a positive solution—an affirmative philosophy. We [fol. 292] also had been taught that the First World War accomplished nothing despite the 4 years of suffering and slaughter. We were determined that another fruitless war of that kind should not occur.

Finally, we were very much aware of the growing menace of Hitlerism, and it seemed that Hitlerism could be stopped internationally, and a developing Fascist movement, or what might turn into a Fascist movement, in this country, could be stopped only by organizing a very broad, united front—and this the Communist Party purported to do. They did seem to be taking the lead against Hitlerism.

As you remember, this was the period of the movement for collective security in the League of Nations. This was also the period of the Spanish Civil War, when the democracies seemed to be fighting against the armed forces of Hitler and Mussolini in Spain.

All these influences converging made me feel before I

went into the party that it was my idea to aline myself with this leadership.

I discovered in the 2 years which followed that I had made a mistake, but my break did not come finally until after the Hitler-Molotov pact, which initiated the Second World War.

I left then not only because the shift of the line led me into a position which was politically and morally intolerable, but also because I had had such experience of the intrigues and duplicity that are inseparable from Communist Party membership with the requirement that one critically defend the Soviet Union, that as a person of morality and sincerity I could remain in that position no longer.

I not only broke with the party, but increasingly in the years that have followed have I felt it necessary to fight the influence of the Communist Party in those areas where I could be most effective.

Mr. Clardy. And you regard your appearance here today as falling in that category, I take it?

Mr. Davis. Yes. It is an unpleasant duty, but one I feel I must accept.

Mr. Tavenner. Did you have the feeling during the period of your membership in the Communist Party that the Communist Party was being used as a tool by a foreign power for the advancement of its own foreign policy?

Mr. Davis. That was less clear at the time because the Russian policy then—the policy of collective security to which I refer—seemed an effective policy against fascism; and, therefore, not only did I accept it, but as you know, many liberals and progressives were ready at that time to unite with the Communist Party because it did seem to be working for peace and against fascism.

Mr. Tavenner. Did your view change as a result of subsequent events?

Mr. Davis. Yes. The shift of policy after 1939 and the rapidity with which the Communist Party in this country fell in line with the Russian policy, even though they didn't understand it, made it quite clear that they were acting for the Soviet Union; that they were in a certain sense Soviet nationalists and not working for the broader interests of the American people.

Mr. Tavenner. I believe you stated that you became a member of the Communist Party in September of 1937?

Mr. Davis. No. I believe it was January.

Mr. Tavenner. In January of 1937?

[fol. 293] Mr. Davis. Sometime in the middle of that winter.

Mr. Tavenner. How were you employed at that time?

Mr. Davis. I was teaching at Harvard.

Mr. Tavenner. What type of a group of Communists were you assigned to upon joining the party?

Mr. Davis. It was a very small group. I think the active members were no more than 6 or 7 at that time and they comprised 2 or 3 persons connected with Harvard and some townspeople.

Mr. Tavenner. Was it the type of an organization which has been frequently referred to as a neighborhood group?

Mr. Davis. No. I think it had a rather more special connection than that. I think most of the people in it were professionals, or the wives of professionals in academics.

Mr. Tavenner. How long did you remain a member of that particular group?

Mr. Davis. That is the only group I ever belonged to, but it changed its character after a few months.

Mr. Tavenner. Will you explain that, please?

Mr. Davis. Because of the temper of the time more teachers were coming into the Communist Party and, therefore, the group was made exclusively a Harvard teachers' or graduate student group.

Mr. Kearney. How many members were in that group when you first joined?

Mr. Davis. I remember at the first meeting I went to—it is a very dim image now, but as I say, I don't think there were more than 7 or 8, or 6 or 7 people there.

Mr. Kearney. Did the membership increase as time went on?

Mr. Davis. It increased, but I don't believe that it ever comprised more than 15. I would say that was the maximum.

Mr. Kearney. Was the membership of this organization that you at that time joined—were they mostly confined to

membership in the neighborhood surrounding Harvard, with Harvard teachers?

Mr. Davis. As I say, they were—after a few months they became either exclusively Harvard teachers or graduate students at Harvard, or fellows.

Mr. Moulder. Mr. Chairman, you asked him to what group he was assigned, Mr. Kearney. Could you elaborate on that? Did you join somewhere else or did you just join that group?

Mr. Davis. What I did was talk to a person whom I assumed to be a Communist Party member, and he invited me to the meeting.

Mr. Kearney. He invited you to the Communist Party meeting?

Mr. Davis. Yes.

Mr. Kearney. And you assumed that he was a member?

Mr. Davis. Yes.

Mr. Kearney. Did you later discover that he was a Communist?

Mr. Davis. Yes.

Mr. Tavenner. What was his name?

Mr. Davis. I am not certain at this distance which of two persons it was.

Mr. Tavenner. Were both of the persons that you have in mind persons known to you to be members of the Communist Party?

Mr. Davis. Yes.

Mr. Tavenner. Then I will ask you to give the names of both of them.

[fol. 294] Mr. Davis. Louis Harap.

Mr. Tavenner. Will you spell the last name, please?

Mr. Davis. H-a-r-a-p.

Mr. Tavenner. And I think you should spell the first name.

Mr. Davis. L-o-u-i-s.

Mr. Tavenner. If you know what his subsequent connection was with the Communist Party I think you should tell us. That is, if you know of your own knowledge whether he has remained in the Communist Party for any definite period of time or whether he withdrew from the party at any time, I would like you to so state.

Mr. Davis. I have no first-hand knowledge. I have read writing by him in recent years which would suggest that his tendency had remained the same.

Mr. Kearney. Is he a professor at Harvard?

Mr. Davis. No; he was not. He was employed in a very minor capacity as librarian, I believe, of the philosophy library.

Mr. Kearney. Is he still connected in that position?

Mr. Davis. No. He left Harvard many years ago.

Mr. Kearney. Do you know what he is doing now?

Mr. Davis. I believe he is editor of a magazine.

Mr. Kearney. Do you know the name of the magazine?

Mr. Davis. It is the Jewish Affairs, I believe. Some such magazine.

Mr. Velde. Will you spell that, please?

Mr. Davis. The name of the magazine?

Mr. Velde. Yes.

Mr. Davis. Yes. J-e-w-i-s-h A-f-f-a-i-r-s.

Mr. Kearney. He is the editor, you think?

Mr. Davis. Yes. I think he is editor.

Mr. Kearney. Do you know where that is published?

Mr. Davis. In New York.

Mr. Tavenner. Now will you give us the name of the second person who may have been the person whom you first interviewed with regard to joining the Communist Party?

Mr. Davis. William Parry—P-a-r-r-y.

Mr. Tavenner. Do you know whether he remained in the Communist Party for any period of time or whether he is still in the Communist Party, to your knowledge?

Mr. Davis. I have known nothing of him since, I believe, 1938.

Mr. Tavenner. Were you required to sign a card, or were you issued a card evidencing your Communist Party membership?

Mr. Davis. For the purpose of collecting dues the treasurer of the unit had a group of booklets in which stamps were pasted to show that the dues had been paid.

Mr. Clardy. You said "the union"?

Mr. Scherer. Unit.

Mr. Davis. Unit. I'm sorry.

Mr. Clardy. Oh, you said unit. I'm sorry. I can't hear you up here.

Mr. Davis. Do you want me to adjust the microphones?

Mr. Tavenner. Did that card have your name on it?

Mr. Davis. No. It had either initials or a pseudonym, and the initials were not actually the initials of the person.

Mr. Tavenner. Will you tell the committee the reason for that?

[fol. 295] Mr. Davis. This was a professional unit and professional units were always particularly protected so that there would be no publicity which would be harmful to the careers of the individual members.

Mr. Tavenner. By that you mean that your Communist Party membership was kept secret from the rank-and-file members of the Communist Party?

Mr. Davis. Yes. To a very large extent.

Mr. Tavenner. And it was in order to preserve that special privilege of immunity, or immunity, that pseudonyms were used?

Mr. Davis. Yes.

Mr. Tavenner. What was your pseudonym?

Mr. Davis. I don't remember because we simply made up one as the books were issued and didn't use it in any other connection. It was purely an aid to memory, so to speak, when the dues were paid. The treasurer called out the names and the persons identified themselves.

Mr. Tavenner. Was the decision to have the names kept secret one of national policy of the Communist Party in such organizations as yours, or was it the result of a decision of your own group?

Mr. Davis. This was regular practice, I believe.

Mr. Tavenner. How was that practice and other Communist practices relayed to your group?

Mr. Davis. The treasurer was informed by the officials what the practice was and instructed in the use of these books.

Mr. Tavenner. Who was your treasurer at that time?

Mr. Davis. I can't remember. The officers within the group kept changing and the membership kept changing. This is, as you know, 15 years back.

Mr. Tavenner. Do you recall the names of any Com-

munist Party functionaries who relayed the instructions and directives from the Communist Party to your group?

Mr. Davis. Yes. There was a paid functionary named Hy Gordon.

Mr. Clardy. What was his capacity with the party?

Mr. Davis. He was an official of some sort. I don't know his title, but he devoted his full time to these activities and was paid some small salary to which this unit contributed.

Mr. Clardy. He was the chief giver of directions, shall we say?

Mr. Davis. Yes. There also was a girl named Margot Clark. M-a-r-g-o-t C-l-a-r-k.

Mr. Clardy. Was she a paid functionary also?

Mr. Davis. No, I don't believe she was a paid functionary, but she went back and forth between this unit and the officials.

Mr. Tavenner. Do you recall how Margot Clark was employed at that time?

Mr. Davis. Then or later she ran a book shop near Harvard Square called something like The Progressive Book Shop.

Mr. Tavenner. Did she have any other employment during the time you knew of her Communist Party activities?

Mr. Davis. No.

Mr. Kearney. Was your group ever addressed by high functionaries of the Communist Party?

Mr. Davis. Yes. A man named Phil Frankfeld. P-h-i-l F-r-a-n-k-f-e-l-d.

[fol. 296] Mr. Kearney. Phil Frankfeld?

Mr. Davis. Phil Frankfeld visited it from time to time.

Mr. Kearney. Do you know where he lives?

Mr. Davis. Where he lived then? No; I don't.

Mr. Kearney. Did you discover where he lived later?

Mr. Davis. He has had a very public career since then. He was involved in one of the trials, I think, at Philadelphia.

Mr. Kearney. I think you are quite correct in assuming he has had quite a public career.

Did you ever know whether the gentleman in question came from Baltimore or Washington?

Mr. Davis. It is my impression that he came from Baltimore or Washington.

Mr. Tavenner. Mr. Chairman, the testimony before the committee shows that he was sent from Philadelphia to the Baltimore area and was at one time the head of the Communist Party for the Washington district, which consisted of the District of Columbia and Maryland.

Mr. Walter. Where is he now, Mr. Tavenner?

Mr. Tavenner. He was recently convicted at Baltimore along with others for violation of the Smith Act.

Mr. Kearney. I think he is serving sentence now.

Mr. Tavenner. I think so.

Mr. Scherer. Professor, do you know where Hy Gordon is today?

Mr. Davis. No. I have never seen him since the thirties.

Mr. Scherer. Do you know where the Clark woman is today?

Mr. Davis. No.

Mr. Tavenner. Will you state how frequently the group met?

Mr. Davis. During the academic year I think it was once a week. Certainly it was as often as twice a week.

Mr. Tavenner. Where were these meetings held?

Mr. Davis. In the apartments of the members.

Mr. Tavenner. What was the nature of the business that was conducted at the meetings?

Mr. Davis. It consisted, as I remember it, of three activities: First, discussing the policies of organizations to which we belonged, like the Teachers' Union, or the front organizations, and determining upon the role that the individual member should play in those organizations;

Secondly, the question of Marxist education—organizing study groups to which teachers would be invited; and, thirdly, various fund-raising activities for united front organizations or for the party itself.

Mr. Tavenner. Let us consider each of those functions in the order in which you named them.

Now what was the policy of the Communist Party with reference to your activities in outside organizations?

Mr. Davis. We were to assume positions of leadership so that their policies would be as close to the policies desired by the Communist Party as possible.

Mr. Tavenner. How was that information transmitted to you as to what organizations you were to infiltrate?

Mr. Davis. I think it hardly needed to be transmitted, because our immediate concern was with the Teachers' Union and with organizations like the [American] League for Peace and Democracy.

[fol. 297] Mr. Tavenner. It may be well at this point for you to give us the names of all the organizations which your cell or group of the Communist Party infiltrated or endeavored to infiltrate.

Mr. Davis. The so-called front organizations change so rapidly that it is hard for me to remember them. But during the period in which I was active we were concerned dominantly with the Teachers' Union.

Mr. Tavenner. Was that merely a local union at Harvard, or was that a national union?

Mr. Davis. It was the national union affiliated with the American Federation of Teachers, which belonged to the A. F. of L.

Mr. Tavenner. Do you recall what instructions were given you by the Communist Party, or any functionaries of the Communist Party, with regard to that particular organization?

Mr. Davis. I think we were left pretty much to ourselves as far as the local organization is concerned, because we all read the party press and were aware of what the general line was. We got the various publications of the Teachers' Union——

Mr. Kearney. But isn't it also true that from time to time you received instructions from national headquarters on your procedure?

Mr. Davis. Oh, yes. As I say, persons like Frankfeld sat in with us, but that was on the whole to educate us because the party felt we were liberals and progressives, and we were not thoroughly grounded enough—not thoroughly disciplined enough—so that, as I recall these conversations, they were of a fairly general nature since the persons who came to visit us were not very well informed about the Teachers' Union itself.

On a national scale the situation was different. There there was a Communist Party faction which did receive——

Mr. Kearney. Pardon me. Was Frankfeld a member of the teaching profession?

Dr. Davis. No. So far as I know he had no connection with it.

Mr. Tavenner. You were familiar with the teachings of Lenin on the subject of the activity of teachers and what they should endeavor to do, I assume?

Mr. Davis. I have seen a passage quoted often since. I don't recall it from those days.

Mr. Tavenner. I have before me volume 23 of Lenin and I find at page 499 this statement:

> But today the chief task of those members of the teaching profession who have taken their stand with the International and the Soviet Government is to work for the creation of a wider and, as nearly as possible, an all-embracing teachers' union.

Mr. Davis. Yes. That is correct.

Mr. Tavenner. And again on page 500 there is this statement:

> Your union should now become a broad teachers' trade-union embracing vast numbers of teachers; a union which will resolutely take up its stand on the Soviet platform and the struggle for socialism by means of a dictatorship of the proletariat.

You are aware of those purposes and of that thinking of the Communist Party?

Mr. Davis. Yes.

Mr. Moulder. Was that book referring to the teachers in our educational institutions, or just as representatives? [fol. 298] Mr. Tavenner. This has reference to the teachers' trade-unions throughout the world and not any one particular country or any one segment of the country.

Mr. Davis. Of what date are those passages? Lenin was not speaking of the United States, of course.

Mr. Velde. We hope not.

Mr. Tavenner. What activity did your group engage in which might be said to have carried out the policy as expressed by Lenin of assisting in the organization of teach-

ers' trade-union movement which would be adaptable to the purposes of the Soviet Union?

Mr. Davis. We worked very hard to build up the Teachers' Union in Harvard and to build up teachers' unions generally, and we did this with a comparatively clear conscience because our objectives, our immediate objectives, were to improve teaching conditions, raise salaries, and so on; but also obviously we wished teachers to take the same position that we took on public questions.

Mr. Tavenner. Was there a local of that organization at Harvard?

Mr. Davis. Yes.

Mr. Tavenner. Did it have a name?

Mr. Davis. It was called the Cambridge Union of University Teachers, as I recall.

Mr. Tavenner. Will you explain the manner in which the Communist members of your group functioned within the Teachers' Union—your local Teacher's Union?

Mr. Davis. We usually discussed before a meeting what policies we would urge at the meeting; and whenever there were elections we would decide in advance what candidates we would propose or support.

Mr. Tavenner. And the purpose of that was to make certain that the plans of your group were carried out because the vast majority of members of your local were non-Communist?

Mr. Davis. Yes.

Mr. Tavenner. Did your group ever oppose the election of an official of the local group who was opposed to the Communist Party?

Mr. Davis. That would follow almost inevitably from the fact we did support some. Naturally we would oppose their opponents, but I can't remember specific instances.

Mr. Tavenner. Did the group of Communists who were working within the Teachers' Union also sponsor the passage of resolutions which the Communist Party as a whole was interested in having endorsed or adopted by various groups?

Mr. Davis. Yes.

Mr. Tavenner. Can you recall any specific instance?

Mr. Davis. No; I can't, but they would have to do again with the national political situation at that time.

The Communists supported the New Deal, supported the Roosevelt administration until the Russian pact of 1939; and many of the measures which they supported were, I think, good measures—against anti-Semitism; against fascism; for minority rights.

Mr. Tavenner. Did your group of Communist Party members endeavor to control the selection of delegates from the local Teachers' Union to national conventions?

Mr. Davis. Yes.

Mr. Tavenner. And also to district conventions?

Mr. Davis. Yes.

[fol. 299] Mr. Tavenner. Of what district was the local at Harvard a member?

Mr. Davis. The Massachusetts Teachers' Union—whatever its title was.

Mr. Clardy. Can I interject there?

Were you successful in your efforts to obtain that control in the selection of delegates?

Mr. Davis. During that period; yes.

Mr. Clardy. Was that because you had been a cohesive body, knew where you were going, and worked hard at it?

Mr. Davis. And also because, as I say, the policies we supported were policies supported by many liberals and progressives at that time.

Mr. Clardy. And you had the support of many other people who would probably have rebelled at communism as a word or party?

Mr. Davis. I am not even sure the last is true, because many were willing to work with Communists in the united front at that time.

Mr. Clardy. Even though they knew they were working with Commies?

Mr. Davis. Yes.

Mr. Doyle. What year was that, please?

Mr. Davis. That was between 1937 and 1939.

Mr. Clardy. We are talking now about those in the teaching profession particularly?

Mr. Davis. Yes.

Mr. Clardy. You understand that?

Mr. Davis. They would have said, though, they objected strongly to certain Communist policies, they felt the good ends justified the means of collaboration at that time.

Mr. Scherer. I believe you said, Professor, that the group, party, at that time apposed anti-Semitism?

Mr. Davis. Yes.

Mr. Scherer. Today, of course, you know it is as anti-Semitic as the Nazi Party?

Mr. Davis. Yes. That's why I was particularly interested in the position of Louis Harap.

Mr. Clardy. I don't follow you there.

Mr. Davis. Because, as editor of the magazine, whatever it may be called, Jewish Affairs, I believe, he is now defending the Prague trials, contending that they are not anti-Semitic.

Mr. Clardy. Do you happen to have a copy of that available? I would like to see one.

Mr. Davis. No; I don't.

Mr. Clardy. If you could obtain one and send it to me, I would appreciate it. We may have it in the files, but I would like to see a recent issue.

Mr. Tavenner. Now, will you proceed, please, to describe the method by which you endeavored to control the selection of delegates to the district and national convention of the Teachers' Union?

Mr. Davis. One reason why Communists were successful was because in these organizations all service was voluntary. The teachers were very busy; trips were expensive, and very frequently those who offered to go were asked to go because no other persons were available, and if a member of the Communist Party offered to go his offer was usually accepted, if he offered to go to a national convention. [fol. 300] Mr. Tavenner. And were those offers made as a result of a decision by your Communist Party group that they should be made?

Mr. Davis. Yes. Again, if persons were willing to go, even within the Communist group, there was not immediate pressure or orders which had to be carried out. That is, the members of this group still retained a great many of their liberal attitudes and were handled, on the whole, with kid gloves by the officials.

Mr. Tavenner. Did you attend a district or State or National convention of the Teachers' Union?

Mr. Davis. I went to two national conventions.

Mr. Tavenner. Will you state whether or not Communist Party influences were brought to bear on the conventions that you attended?

Mr. Davis. There was always a Communist Party caucus.

Mr. Moulder. What years——

Mr. Tavenner. Describe that——

Mr. Moulder. What years were those?

Mr. Davis. These were in the academic years 1937-38 and 1938-39.

The convention I remember most clearly was at Buffalo, and it occurred just at the time of the pact in late August 1939.

Mr. Clardy. Witness, are you sufficiently acquainted with the facts as of today to tell us whether or not the same techniques are being followed today?

Mr. Davis. Oh, I'm sure that can be taken for granted. The Communists always meet and consult together.

Mr. Clardy. And the things you've been describing as taking place in the thirties, in your judgment, are taking place today?

Mr. Davis. Yes; except that the situation probably requires much more secrecy. These activities were comparatively open at that time.

Mr. Clardy. You think there is more of an underground now than there was at that time?

Mr. Davis. Yes, and a much smaller one.

And I should like to interject at this point the fact that at the present time among teachers the influence of Communists is very slight because the times have changed and because the teachers have been so shocked by the events in the Soviet Union in the last 8 years; and among students at colleges like Smith any evidence of radical activity has disappeared entirely.

Mr. Clardy. Would you say the things you and others like you have been doing to combat the Communist influence may have had something to do with making it more difficult for the Communists to get along?

Mr. Davis. A little, I hope; but mostly it is a matter of

world events—the Korean war; the purge trials in the Soviet Union and the inhumanities practiced by Communist regimes. It's very hard for anyone to defend those today.

Mr. Tavenner. Would you also say that knowledge of the manner in which the Communist Party endeavors to exert influence over its own members and to effect their thinking, and particularly their views as to academic freedom, have awakened the teachers and students in a measure to the dangers of communism?

Mr. Davis. Yes. I think those who entered the Communist Party for good reasons, for democratic and progressive reasons, discovered that the activities of the party were inconsistent with democracy and progressivism [fol. 301] and left; and I think those who left have had a much greater insight into the dangers of communism, both intellectually and politically, than they otherwise would have had. They've salvaged that at least from the experience.

Mr. Clardy. You wouldn't say the job of cleansing the temple has been finished, though, would you?

Mr. Davis. No; but I am speaking now of general influence among teachers and students. The open influence is very slight now.

Mr. Tavenner. I was——

Mr. Velde. Mr. Davis, may I ask you: Do you feel a person who is a Communist, belongs to the Communist Party, adheres to the principles of the Communist Party, follows the Communist Party line, is a free agent, especially with reference to his teaching ability?

You mentioned something awhile ago about the control the Communist Party has over the thinking of teachers and American citizens, how it attempts to control the thinking of American teachers and citizens generally. I'm just wondering if you have any further comment to make on that particular phase.

Mr. Davis. So far as my own experience goes, there was no direct attempt to influence teaching. There was never in the unit to which I belonged any discussion of what we did in class. It was always an indirect influence through Marxist-Communist political education.

Mr. Velde. I am referring to this: Do you think a Com-

munist Party member can have a free and open mind, especially in teaching in a classroom, even though he was given no instruction by the Communist Party as to what he should teach?

Mr. Davis. It depends on his subject. I should think a teacher of music or mathematics might teach in a way that was quite unaffected by his political theories. In the political sciences, and even in the humanities, I doubt if this can be so; and I, myself, now feel that no one who is generally genuinely humane could be a defender of what goes on now in the Soviet Union and the Communist countries.

Mr. Velde. Then, within the classroom it is possible, in your opinion, that a Communist can teach without instilling Communist philosophies in students, providing he taught the proper subjects. Now, how about his influences outside the classroom on our thinking?

Mr. Davis. There he's likely to have more influence. This often, too, will be indirect because of his influence on other faculty members, because of the talks he gives at public meetings. It's not been my experience that Communists, partly for reasons of security, try very generally to indoctrinate students specifically. I think the influence does tend to be an indirect one.

Mr. Velde. Mr. Davis, you have mentioned, discussed this cell, Communist Party, in Harvard. I would like to state, for the benefit of the public press, that in the committee's opinion the fact that the testimony at this hearing involves a Communist cell at Harvard is no reason that inferences should be drawn that we are investigating Communist activities only at Harvard University or that these activities are any more serious at Harvard than at any other of our great universities.

Mr. Kearney. Professor Davis, a few days ago, in the newspapers, there was a hue and cry raised by certain educators throughout the country protesting against the investigation of communism and Communists in the universities and colleges of the country. In other words, these [fol. 302] individuals stated there was an interference with freedom of thought.

Do you believe that this committee should proceed in

exposing communism and Communists in the colleges and universities of this country?

Mr. Davis. I think in the present situation that the Government should explore and expose the ramifications of the Communist Party; but I think this has to be done with great caution by persons who are politically informed. I think that the testimony should be cautious testimony that would stand up in court. I think any loose charges, particularly a loose use of the word "Communist" or "Red" applied to teachers who are speaking their honest convictions about national or international affairs, can be extremely harmful. I think it's entirely a question, therefore, of the manner in which this is done, the scrupulousness.

Mr. Kearney. With that I heartily agree with you, but at the same time do you see any objection to the investigation of Communists and communism in labor unions, in other phases of our national life, to the exclusion of universities and colleges?

Mr. Davis. No. I do feel it necessary to have all possible information about the activities of the Communist Party itself for security reasons.

Mr. Clardy. Could you put it this way: If we treat the other witnesses as you have been treated thus far, would you not say we are conducting it fairly and as you would like it?

Mr. Davis. So far, yes.

Mr. Scherer. Do you feel that your experience today here has interfered in any way with your academic freedom or the academic freedom of any professor at Smith College?

Mr. Davis. That I will learn in the weeks to come.

Mr. Doyle. May I ask this right along that line: Have you been subpenaed to come before this committee?

Mr. Davis. Yes.

Mr. Doyle. And you came as a result of being subpenaed?

Mr. Davis. Yes.

Mr. Velde. Proceed, Mr. Doyle.

Mr. Doyle. Would you have felt it your duty to in any way contact this committee or any other governmental agency or department and reveal anything which you have today revealed if you hadn't been subpenaed?

Mr. Davis. I did not do so because I had reason to sup-

pose that the facts were available to the necessary—to the Government agencies.

Mr. Doyle. You mean the facts as regards you, yourself?

Mr. Davis. Yes.

Mr. Doyle. Having been a member back in 1937-38?

Mr. Davis. Yes.

Mr. Doyle. Along the line of the cell at Harvard, am I in error that that cell, so far as you know, no longer exists; does it?

Mr. Davis. I have no direct knowledge of it; no.

Mr. Doyle. And you have had no direct knowledge of it since approximately what year?

Mr. Davis. Nineteen—the fall of 1939.

Mr. Tavenner. An investigator of this committee came to see you before any subpena had been issued?

[fol. 303] Mr. Davis. At the same——

Mr. Tavenner. Isn't that true?

Mr. Davis. At the time of the issuing of the subpena. It was not presented until after he talked to me.

Mr. Tavenner. So that the information you have given the committee was given actually before any subpena was served on you?

Mr. Davis. Yes.

Mr. Tavenner. Or at least some information relating to the general problem?

Mr. Davis. Yes.

Mr. Tavenner. You indicated that the members of your group at the time you were a member of the Communist Party did not make an effort to recruit students into the Communist Party?

Mr. Davis; No; definitely not.

Mr. Tavenner. Well, was the emphasis of recruitment made in any other field?

Mr. Davis. Yes; the effort was to recruit faculty members.

Mr. Tavenner. Why was it the decision was made to attempt to expand the Communist Party within the faculty instead of branching out also and including students?

Mr. Davis. I think——

Mr. Tavenner. Was there a reason?

Mr. Davis. I think there were a variety of reasons, but

the first one is that it would have been much too risky as students join something and leave it and they talk freely and it would have led to the exposure of the individual members.

But I also think, as I say, that the group at Harvard were at heart democrats, liberals, progressives. I think they disliked using any pressure they might have on individual students, even though this seems inconsistent with their policy and position as Communists.

In any case, though, members of the group spoke as individuals before general student meetings and rallies. There was a very minimum of direct personal contact.

Mr. Tavenner. Was it common knowledge at Harvard that a Communist Party cell existed among the faculty members?

Mr. Davis. Yes, among liberals close to those who were party members.

Mr. Tavenner. Well, that fact in itself would have been an inducement to members of the student body to unite in some group of their own, such as the Young Communist League, would it not?

Mr. Davis. It might be an influencing factor, but there were so many other factors in that time. The students were even more politically conscious than the instructors, and there were all sorts of organizations for them which were directed from above, quite independently of this group, so that even if the group hadn't existed I think student organizations would have taken very much the same character.

Mr. Tavenner. Do you know whether or not there were student organizations of the Communist Party?

Mr. Davis. This was almost certainly, although I had no direct contact with it, the Young Communist League. It may have had a different name, although that was what it was.

Mr. Tavenner. Did you have any information as to the numbers that were of that group?

[fol. 304] Mr. Davis. I would have the impression there the membership was quite small, though it exerted a larger influence than the number would indicate.

Mr. Tavenner. Were there other groups members of the Communist cell within the faculty?

Mr. Davis. I have no certain knowledge of that. I have no reason to suppose there were.

Mr. Clardy. Counsel, may I interrupt?

You say they would exert influence far greater than their numbers would seem to indicate possible. What do you mean by that?

Mr. Davis. I mean among the students the same thing would happen in student organizations that happened to us in the Teachers' Union—that is, a small group whose policies were in general accordance with the left-wing and progressive movements at that time could assume a position of leadership, and they were often very intelligent and well-informed students.

Mr. Tavenner. I would like to return now to the action that was taken at the national conventions of the Teachers' Union.

I understand you to say that caucuses were held at both of the conventions that you attended and that those caucuses were made up of Communist Party members.

Mr. Davis. I can't remember attending a caucus at the first one I went to. I think they may have slipped up or my name wasn't known, or something. I can't remember going to any of the first, but I do remember the second.

Mr. Tavenner. Well, tell us all you know about that, please.

Mr. Davis. These were fairly large, as I remember, and would discuss what was occurring at the convention and what was needed to shift opinion or to get someone elected. It operated very much as the unit at Harvard operated within the local Teachers' Union; and at that time they were rather careless so far as publicity was concerned—people at the convention—in the sense that this was going on, I believe.

Mr. Tavenner. How many composed that caucus meeting?

Mr. Davis. It was quite large, and even that may have been selective.

Mr. Tavenner. Can you give the committee any reasonable idea as to the number?

Mr. Davis. No; I would—I really can't.

Mr. Walter. Where were they held? You testified one was held in Buffalo. Where was the other convention?

Mr. Davis. In a place in Ohio, on a lake. I don't remember it now.

Mr. Tavenner. How many of your associates from Harvard attended that convention with you?

Mr. Davis. The second one?

Mr. Tavenner. Yes.

Mr. Davis. I remember only one other person.

Mr. Tavenner. What was his name?

Mr. Davis. Let me preface the naming of names by expressing my extreme concern over the necessity of naming names—not because I don't agree with what I said earlier about the necessity of studying the ramifications of the Communist Party, but because these events occurred from 12 to 15 years ago, I knew many teachers in many different connections, professional and personal, and I have [fol. 305] moments of doubt even among—about those whom I assumed I knew best in these connections.

But do you still wish me——

Mr. Tavenner. Well, now, let me say this: I do not want you to state in open session the name of any person as to whom you are not sure or as to whom you are in doubt as to membership.

Mr. Velde. You are referring to membership in the Communist Party, aren't you, Mr. Counsel?

Mr. Tavenner. Yes, and that was my question.

Mr. Davis. Yes.

Mr. Tavenner. As to who it was that attended this Teachers' Union convention with you who was a member of the Communist Party with you at Harvard.

Mr. Davis. Yes. That is why I hesitated.

Mr. Tavenner. And if you are in doubt as to the name, I do not want you to state it in public session.

Mr. Davis. I would prefer not to, then.

Mr. Clardy. Well, let me say this: As a new member of the committee, I join in what has been said and I want you to thoroughly understand that we do not want you, as individual members to give us any wild rumors or guesses. We want you to speak only of your knowledge.

Mr. Davis. Yes.

Mr. Jackson. May I ask a question at this point, Mr. Chairman?

Mr. Velde. Mr. Jackson.

Mr. Jackson. Is the doubt in your mind, Professor, as to whether or not this individual was a member of the Communist Party?

Mr. Davis. No; in this case it's a doubt whether the person I'm thinking of is the one who actually attended the convention.

Mr. Velde. But I take it you are certain that this person you are thinking of, who attended the convention, was a member of the Communist Party; is that right?

Mr. Davis. No; I am not certain about the person who attended the convention with me—the second convention. That is what I am uncertain about.

Mr. Velde. But you remember him as a member of the Communist Party?

Mr. Davis. One of the persons I have in mind was a member of the Communist Party; yes, but I am not certain he is the one who went to the convention.

Mr. Velde. Well, will you state, then, for the benefit of the committee the name of that person and how you know he was a member of the Communist Party without reference to the convention?

Mr. Doyle. Now, may I ask this, please, at that point?

Mr. Velde. Well, just a minute. Will you let the witness answer my question?

Mr. Doyle. No; I want to interpolate right here before the witness answers that question, if I may, please.

Mr. Velde. All right, proceed.

Mr. Doyle. I want to compliment the witness on being extremely careful. I want to compliment our counsel on the statement he made, interpreting to the witness the kind of evidence we want, and I wish to go on record now, as I have often, that I, as a member of the committee, want to state to the witness if there is any reasonable doubt in your [fol. 306] mind as to whether or not this person or any person about whom you are testifying now or do before you are through with your testimony is a Communist, in line with the question you are asked, I would say as a member of the committee I don't want you to give the name

of a person unless you are dead sure that person was a member of the Communist Party.

Mr. Velde. I would like to concur here in the statement, as far as that is concerned, Mr. Doyle, and further state should any person be mentioned in public hearing and that person feels that he would like to come forward and talk to the committee counsel and committee investigator with reference to the testimony about him, or would like to come forward in opposition and refute that testimony, he is certainly welcome to do so by applying to our counsel or one of our investigators.

Mr. Tavenner. Now, Mr.——

Mr. Velde. I think I have the question that hasn't been answered yet.

Will the reporter restate the question?

Mr. Tavenner. Mr. Chairman, I had planned before the testimony is completed to give him an opportunity to state who were associated with him in this work, and the circumstances, and I don't know whether it can be done very well by just asking him one particular name at a time.

Mr. Velde. All right; I will withdraw the question, and we will proceed.

Continue, Mr. Counsel.

Mr. Tavenner. Now, will you proceed to describe for the committee the action that was taken in the caucus that you referred to and just how the caucus was managed?

Mr. Davis. That caucus, as I say, discussed policies and events at the convention itself.

I remember more clearly a caucus which I attended in New York during the academic year and not at a time of convention. This was a caucus of representatives from different parts of the country. It was addressed by Jack Stachel, an official of the——

Mr. Tavenner. Now, was this meeting you referred to in New York a Communist Party meeting or was it a caucus of a group within the Teachers' Union?

Mr. Davis. It was a caucus of the group within the Teachers' Union.

Mr. Velde. Mr. Counsel, if you have a convenient breaking-off point, the committee would like to recess.

Mr. Tavenner. May I finish this one point?

Mr. Velde. Yes, sir.

Mr. Tavenner. You say Jack Stachel spoke to the group of teachers of the Teachers' Union?

Mr. Davis. Yes.

Mr. Tavenner. What was Jack Stachel's position in the Communist Party?

Mr. Davis. He was a high official of some kind.

Mr. Tavenner. He is one of those who was convicted in the first trial of the Communists in New York——

Mr. Davis. Yes; under——

Mr. Tavenner. Under the Smith Act, was it not?

Mr. Davis. Yes.

[fol. 307] Mr. Velde. The committee will be in recess until 2 o'clock.

(Thereupon, at 11:52 a. m., the hearing was recessed, to reconvene at 2 p. m. the same day.)

AFTERNOON SESSION

(At the hour of 2:03 p. m. of the same day the proceedings were resumed, the following committee members being present: Representatives Harold H. Velde, Donald L. Jackson, Kit Clardy, Gordon H. Scherer, Francis E. Walter, Morgan M. Moulder (appearance noted in hearing), Clyde Doyle, and James B. Frazier, Jr. (appearance noted in hearing).)

Mr. Velde. The committee will be in order.

Proceed, Mr. Tavenner.

Mr. Tavenner. All right.

Mr. Davis, be seated, please.

Professor Davis, in your testimony this morning you set forth the activities of the members of your cell in three categories. One was the aid and assistance that you as Communist Party members should give in infiltrating and aiding Communist front-organizations——

Mr. Davis. Or professional organizations.

Mr. Tavenner. Or professional organizations; and second, Marxist study groups that you participated in; and, third, was fund-raising campaigns for the benefit of organizations in which the Communist Party was interested.

I am just reminded sometimes you nod your head in approval rather than to specifically answer, and the reporter——

Mr. Davis. I see.

Mr. Tavenner. Can't put down the nodding of the head.

Mr. Davis. This summary seems to be correct.

Mr. Tavenner. Yes.

When we concluded the morning session, you were about to tell us of a caucus meeting that occurred in New York City which was addressed by Jack Stachel. Now, will you inform us fully about that meeting, what it was, its purposes and any other information you can give us about it.

Mr. Davis. It was to determine the policies of the Communist leaders within the A. F. of T.

Mr. Clardy. Within what?

Mr. Davis. Within the American Federation of Teachers.

At that time——

Mr. Tavenner. Excuse me. Will you state that over, please?

Mr. Davis. It was called to determine the policies of the Communists who were in positions of leadership within the American Federation of Teachers.

(Representatives Morgan M. Moulder and James B. Frazier, Jr., entered the hearing room at this point.)

Mr. Tavenner. In ascertaining who were those leaders——

Mr. Davis. I don't think I can——

Mr. Tavenner. What was the purpose in attempting to ascertain the names of the leaders in that organization?

Mr. Davis. Oh, no; these were Communists who were in position of leadership, and they were called by the party to the meeting in New York to determine future policy——

Mr. Tavenner. Oh, I——

Mr. Davis. Of the American Federation of Teachers.

[fol. 308] Mr. Tavenner. I'm sorry—I misunderstood you.

Mr. Clardy. They wanted to resolve a course of action?

Mr. Davis. Yes: and this course of action was outlined by Stachey.

Mr. Tavenner. Over what area were these people selected who attended that meeting?

Mr. Davis. From a quite wide area—from New England, the Middle Atlantic States, and I think there were some representatives from the West, the Middle West at least.

Mr. Tavenner. Now, to be certain, I understand that this was a meeting of Communist Party members——

Mr. Davis. I understood it to be; yes.

Mr. Tavenner. And it was a meeting of Communist Party persons who were also members of the Teachers' Union——

Mr. Davis. Yes.

Mr. Tavenner. Is that correct?

Mr. Davis. Of the national federation.

Mr. Tavenner. Of the National Federation of Teachers?

Mr. Davis. Teachers.

Mr. Tavenner. Was a person by the name of Hulda McGarvey present at that meeting?

Mr. Davis. No.

Mr. Tavenner. Were you acquainted with Hulda McGarvey?

Mr. Davis. Yes; I had met her at Smith at the time she was teaching there, and I met her at caucuses of the New England representatives meeting in Boston.

Mr. Tavenner. Now, when you say "caucus"—caucus of what?

Mr. Davis. Of Communist Party members within the State Federation of Teachers.

Mr. Tavenner. And you met with her as a member of that caucus?

Mr. Davis. Yes.

Mr. Tavenner. When was that?

Mr. Davis. I can only fix it within the years of my party membership. I can't fix the exact date.

Mr. Tavenner. Did I understand you to state she was employed in some capacity at Smith?

Mr. Davis. At that time.

Mr. Tavenner. How long was she employed at Smith College?

Mr. Davis. I don't know because she had left when I went there myself to teach.

Mr. Tavenner. Oh, she was not there when you were there as a teacher?

Mr. Davis. No.

Mr. Tavenner. Do you know whether she held any position in the Teachers' Union?

Mr. Davis. She represented in some capacity the local at Smith.

Mr. Tavenner. Does that local still exist at Smith College?

Mr. Davis. No; I think it went out of business about 2 years ago.

Mr. Tavenner. Do you recall whether Doxie Wilkerson was present at that caucus in New York?

Mr. Davis. No; he was——

Mr. Tavenner. What position did he have in the union?

Mr. Davis. He was one——

Mr. Tavenner. Teachers' Union?

[fol. 309] Mr. Davis. He was one of the national board of American Federation of Teachers.

Mr. Tavenner. Do you recall whether or not he was also a functionary of the Communist Party?

Mr. Davis. Not at the time in any open way, but I assumed from his presence there that he was a member.

Mr. Tavenner. Was Samuel Sillen at that meeting?

Mr. Davis. Not at the caucus in New York, but I met him at the Communist caucus at one of the two meetings of the American Federation of Teachers I attended, and presumably the second because, as I said this morning, I don't remember going to a caucus of the first.

Mr. Clardy. Counsel, what is that name?

Mr. Tavenner. Sillen—S-i-l-l-e-n.

Mr. Clardy. His first name?

Mr. Tavenner. Sam—Samuel Sillen.

What was his position at that time; do you know?

Mr. Davis. No; he was either teaching or had been teaching somewhere in the New York area.

Mr. Tavenner. Do you know whether or not he held an official position in the Teachers' Union at that time?

Mr. Davis. That, I do not remember.

Mr. Tavenner. Do you know whether he held any position within the Communist Party at that time?

Mr. Davis. No; I know only he was a delegate to the convention; that he also was a Communist.

Mr. Tavenner. Do you know whether he is the same person as Samuel Sillen who was or is affiliated with the Daily Worker at this time?

Mr. Davis. I know him through the magazine Masses and Mainstream, of which he is an editor.

Mr. Velde. Is he an editor of Masses and Mainstream at present time, Mr. Davis?

Mr. Davis. I think so; yes.

Mr. Tavenner. Now, can you recall the names of any other functionaries of the Communist Party or members of the Communist Party who were present at that caucus which was addressed by Jack Stachel——

Mr. Davis. Charles——

Mr. Tavenner. In New York?

Mr. Davis. Charles Hendley—H-e-n-d-l-e-y—was present. He was at that time head of the New York local of the American Federation of Teachers.

Mr. Tavenner. Do you recall what position he held at that time in the teaching profession?

Mr. Davis. No; I don't. I assume he was a teacher in the New York public schools, but I am not certain.

Mr. Tavenner. Will you give us the names of others?

Mr. Davis. I think Bella Dodd was present on that occasion.

Mr. Tavenner. Was Bella Dodd at that time one of the officers of the Teachers' Union?

Mr. Davis. Yes; I think she was a legislative representative but that may have occurred later.

Mr. Tavenner. Did she later become a member of the National Committee of the Communist Party?

[fol. 310] Mr. Davis. I believe so.

Mr. Tavenner. And she has now withdrawn from the Communist Party?

Mr. Davis. Yes.

Mr. Tavenner. And is very much opposed to it?

Mr. Davis. Yes.

Mr. Tavenner. And is active in her opposition to it?

Mr. Davis. Yes; she has testified in New York.

Mr. Tavenner. Was Katherine Lumpkin present at the meeting in New York?

Mr. Davis. No. I met her at the—well, I have known her

in many connections but she was present at the second convention I attended, I'm pretty sure at the time of the Russian-German pact, that is, the meeting of late August 1939.

Mr. Tavenner. Now, what meeting was that to which you refer?

Mr. Davis. That was the convention of the national federation in Buffalo.

Mr. Tavenner. Did she hold any official position in the Teachers' Union?

Mr. Davis. She was a delegate and has at times since then been secretary of the Smith College local.

Mr. Tavenner. Well, was she on the faculty of Smith College at that time?

Mr. Davis. I don't know if she's ever been on the faculty; no. She has been a teacher in the past and, therefore, had a right to belong to the union, but she was not formally connected with Smith College.

Mr. Tavenner. She had never been employed at any time by Smith College, to your knowledge?

Mr. Davis. Not to my knowledge; no.

Mr. Clardy. What was her first name, Counsel?

Mr. Tavenner. Katherine.

Mr. Davis. Katherine.

Mr. Tavenner. The spelling is K-a-t-h-e-r-i-n-e, I believe.

Mr. Davis. Yes.

Mr. Tavenner. Did she reside in that community, Northhampton, though not attached in any way to the school?

Mr. Davis. Did she resign, you said?

Mr. Tavenner. Reside.

Mr. Davis. Yes; she resided in Northhampton.

Mr. Tavenner. Were you acquainted with Dorothy W. Douglas?

Mr. Davis. Yes.

Mr. Tavenner. What was the nature of your acquaintanceship with her?

Mr. Davis. I've known her as a teacher at Smith, but I also knew her in the American Federation of Teachers before I came to Smith, and I knew her as a Communist in that federation, both through contact in caucuses in Massachusetts and also at the national convention.

Mr. Tavenner. Is she still affiliated with Smith College?

Mr. Davis. No; she left, I think, 2½ years ago.

Mr. Clardy. Where is she now?

Mr. Davis. She is residing, I believe, in Bryn Mawr, but is not connected with the college so far as I know.

[fol. 311] Mr. Tavenner. Was she in attendance at the caucus held in New York City which was addressed by Jack Stachel?

Mr. Davis. No.

Mr. Tavenner. Well, now, can you recall the names of any other persons who attended the caucus in New York City which was addressed by Jack Stachel?

Mr. Davis. Not with the complete confidence we discussed this morning; no.

Mr. Tavenner. Will you advise the committee more fully as to the action that was taken at that caucus meeting?

Mr. Davis. At that time, as I recall it, Stachel was in a conciliatory mood because of the requirements of the united front policy and wanted the Communist members to accept the leadership of the so-called Chicago group.

Mr. Clardy. The what?

Mr. Davis. Of the Chicago group.

The Chicago local was at that time considered to be far more conservative politically than the New York tendency and, for political reasons, to preserve the union of the federation, the members at that caucus were instructed not to fight the Chicago local, to permit it to carry out some, at least, of its policies.

That's the best of my recollection after all these years.

Mr. Tavenner. Did you acquire information at that time as to what percentage of the membership of the Teachers' Union were members of the Communist Party?

Mr. Davis. No. This was a very selective caucus.

Mr. Clardy. How many were present altogether?

Mr. Davis. I should say about 20, but we weren't introduced to each other and, so, I can name only those whom I recognized from attendance at the conventions.

Mr. Tavenner. Now, let us return to the second of the national conventions which you attended and at which you said there was a caucus of the Communist Party members. Will you advise the committee what the result of the caucus was that was had?

Mr. Davis. No; I'm sorry to say I cannot because it was a matter of very complex union affairs and after this period of time I simply can't reconstruct it in any meaningful way. It was not a matter of broad national policy, but of factional controversies within the union.

Mr. Tavenner. Well, will you give us, please, the names of persons who attended that caucus and whose names you have not already given us?

Mr. Davis. No; I don't remember any others.

Again, we were not introduced to them, you see. They preserved the secrecy of names as much as possible.

Mr. Tavenner. You referred to your local at Harvard being a member of the district?

Mr. Davis. Yes.

Mr. Tavenner. How many schools were represented in that district organization?

Mr. Davis. Well, both the colleges and the public schools were included. A very large number were because there were public school locals in at least 8 or 10 of the local schools in Massachusetts. The college representation was much smaller, but I suppose at least 6 colleges were rep-
[fol. 312] resented—not by Communist Party members; I'm speaking now of the Teachers' Union itself and the Massachusetts Federation of Teachers.

Mr. Tavenner. Well, what were the names of the colleges who were affiliated with or a part of that district?

Mr. Davis. Smith was; Simmons College; I think there probably was a Wellesley local. I can't be sure. I think Tufts at times may have had representation. Amherst, I think, may have.

Mr. Moulder. I think we should make the record clear they weren't representing those schools there at that meeting, were they?

Mr. Davis. No; I am not speaking now of Communists, but simply of the locals, college locals who were affiliated with the National Federation of Teachers.

Mr. Clardy. Did each of them, however, have a Communist cell within their representation?

Mr. Davis. Not so far as I know. Smith is the only one I can recall that did have.

Mr. Tavenner. Did you attend any caucus meetings at that district——

Mr. Davis. Of——

Mr. Tavenner. Convention?

Mr. Davis. Of Massachusetts?

Mr. Tavenner. Yes.

Mr. Davis. Yes; I think I must have attended at least one. That is why I remember the presence of Dorothy Douglas and Hulda McGarvey.

Mr. Tavenner. Was the same procedure used in the district conventions as in the national of having a caucus of Communist Party members?

Mr. Davis. Yes. That met fairly infrequently because the State organization was less important than either the locals or the national. It was simply an in-between link.

Mr. Tavenner. Can you recall the names of any Communists who met in a Communist caucus attended by you at a district convention which you have not already given us?

Mr. Davis. No; I can't, and I attempted to recall, but none come to me.

Mr. Tavenner. What was your last connection with the Teachers' Union as a members of the Communist Party?

Mr. Davis. It continued as long as my membership in the party continued. That is, I was a Communist, Communist Party member, within the union and that status changed, of course, when I stopped being a member of the Communist Party; but I remained active in the union and found myself in opposition to my former comrades.

Mr. Tavenner. Did you make known in any special way the fact that you had withdrawn from the Communist Party to those that you had been formerly associated with in the Communist Party?

Mr. Davis. Oh, they knew it, of course, instantly.

Mr. Tavenner. Now, your activity and that of the other members of the Communist Party in promotion of the interest of the Communist Party within the Teachers' Union was only one of the various activities, I understand——

Mr. Davis. Yes.

[fol. 313] Mr. Tavenner. In which members of your cell or group engaged?

Mr. Davis. Yes.

Mr. Tavenner. I believe you stated that another function

of your party, of your group, was to join American League for Peace and Democracy?

Mr. Davis. Yes; politically, in the struggle against war and fascism, that was the major popular front.

Mr. Tavenner. Now, will you tell the committee what led up to the work of the Communist Party within that organization, as you understood it?

Mr. Davis. This organization had existed in various forms since at least 1933, and I think——

Mr. Tavenner. It was formerly the American League Against War——

Mr. Davis. War and Fascism.

Mr. Tavenner. And Fascism.

Mr. Davis. It grew out of an international conference, I think, in Brussels around 1933, a peace conference, and continued on an international scale from that time on and through that whole period I think it was a direct instrument of the Communist Party—one of its most important fronts.

Mr. Tavenner. The American League for Peace and Democracy was cited for subversion and having Communists by Attorney General Tom Clark on June 1, 1948, in this language:

> Established in the United States in 1937 as successor to the American League Against War and Fascism in an effort to create public sentiment on behalf of a foreign policy adapted to the interests of the Soviet Union.
>
> The American League for Peace and Democracy was designed to conceal Communist control in accordance with the new tactics of the Communist Internationale.

Is that citation in accordance with the facts as you understood them and believed them to be?

Mr. Davis. Yes; it seems entirely correct, except I would add, as I did this morning, to many in the late thirties the policy of the Soviet Union seemed consistent with American interests so far as the struggle against fascism and Hitler was concerned.

Mr. Tavenner. Now, what was the overall policy of that organization as you were connected with it?

Mr. Davis. It was to a large extent a neighborhood or-

ganization and was intended to draw in people who were not primarily intellectuals, to educate them, to get them to take, as citizens, the political line which the Communist Party desired to see followed. It was not a tightly organized society.

Mr. Tavenner. And that political line was to oppose Hitler?

Mr. Davis. But it also included defense of the Soviet Union, as they say.

Mr. Tavenner. And defense of the Soviet Union?

Mr. Davis. Yes.

Mr. Tavenner. Now, did the policy of that organization change and even the character of the organization change?

Mr. Davis. After the pact?

Mr. Tavenner. Yes.

Mr. Davis. It tried to continue but it collapsed. The position the Soviet Union was following in the fall of 1939 [fol. 314] was so inconsistent with the previously stated objectives of the league that I think the Communists abandoned it and started other organizations in its place, such as the Peace Mobilization, the Yanks Are Not Coming Committees, and so on.

Mr. Tavenner. Well, the American Peace Mobilization organization really took up where the other organization, American League for Peace and Democracy, left off.

Mr. Davis. That's my impression; yes.

Mr. Tavenner. And the change in the Communist Party line was that it was necessary when the pact had been signed between Soviet Russia and Germany to then criticize the United States for preparing for war and calling it a warmonger.

Mr. Davis. Yes; the war was declared to be an imperialist war.

(Representative Morgan M. Moulder left the hearing room at this point.)

Mr. Tavenner. And that change took place almost as quickly as the signing of the pact, didn't it?

Mr. Davis. Yes; there was a week of confusion in which the Communist Party publications were uncertain as to what line to take, but after about a week they got the line

which was completely inconsistent with what had gone before.

Mr. Tavenner. Well, what effect did that have upon the professors at Harvard who were members of this Communist Party group?

Mr. Davis. It was extremely unsettling. I started to break at once, within that week, but then I wondered if there was any justification for this strategy. I thought possibly the Soviet Union, knowing that Hitler was going to war anyway, had tried to make a bargain that would save as much territory as possible from Hitlerism; and so I decided to wait, to give them the benefit of the doubt, but after I had waited about a month and a half, or 2 months, I knew I could not accept this and resigned.

Mr. Tavenner. Well, during that period of time were you visited by functionaries of the Communist Party who endeavored to give the party line or the new party line to your group?

Mr. Davis. Indeed, yes; it was a period of intense activity, especially among professional groups because they realized how profound a shock this was to genuine anti-Fascists and they had to work desperately to hold the line to keep people from breaking. There were a succession of meetings—very long meetings.

Mr. Tavenner. And, as you look back upon it now, was this just not another effort on the part of the Communist Party to dictate to its members how they should think——

Mr. Davis. Certainly.

Mr. Tavenner. And act upon any given subject?

Mr. Davis. Certainly, except that in this country it had to take the form of persuasion, since they had no means physically of keeping a person from leaving the party. Therefore, they had to do it through argument and pressure of all kinds.

Mr. Tavenner. But was opposition tolerated among those who remained in the party?

Mr. Davis. Not opposition; no. There was a period of discussion, as they called it, before the new line was formed; but, once the new line was formed, then criticism of it would lead to expulsion.

[fol. 315] Mr. Tavenner. So, if a person desired to remain

a Communist he had to agree with the Communist Party line that was handed down to him?

Mr. Davis. Yes.

Mr. Tavenner. Now, who were those who attempted to control the thought of you professors at Harvard on that subject?

Mr. Davis. They were the official leaders of the party in New England, and if I'm not mistaken Frankfeld was still there at that time—oh, yes; I am sure he was. He was the principal speaker.

Mr. Tavenner. Now, were there any other organizations which you were directed or induced to become active in? I mean organizations which were not Communist organizations?

Mr. Davis. There was an association of scientific workers, I remember, but those who joined that were scientists and not the members of the group generally.

Mr. Tavenner. Was it a union?

Mr. Davis. No; it was a more or less informal voluntary organization of scientific workers.

Mr. Tavenner. What was the purpose in having the members of your group to infiltrate that group of scientists?

Mr. Davis. I don't know because I didn't take part in it, you see, since I wasn't a scientist; but I knew there was a good deal of interest in it on the part of some members of the group.

Mr. Tavenner. Well, was it true that only those Communists who were scientists were asked to unite with that group?

Mr. Davis. So far as I remember; yes.

Mr. Tavenner. Did you hear any discussions which would indicate the purpose of infiltrating this group of scientists?

Mr. Davis. No; I don't recall discussions. It would be pure inference on my part. Some of the members in Cambridge were also responsible for founding the magazine Science and Society which is a broad theoretical quarterly which has continued until the present time.

Mr. Tavenner. Were you urged to become active in any other group or organization that you can now recall?

Mr. Davis. No; I don't remember any specific suggestions. Communists always worked principally in their professional or trade unions.

Mr. Tavenner. Well, let us turn now, then, to the second division of the activities of your group, that is, the conduct of Marxist study groups. Will you tell us about that, please?

Mr. Davis. It was fairly easy to form them because at this time, again for the reasons I stated this morning, there was lively interest in Marxism; and though I think persons joining these groups had some idea that the instructors were close to the Communist Party they, nevertheless, were ready to discuss Marxism with them, and in some cases actually the persons whom the party secured were not actually party members but were intellectual social scientists who knew a good deal about Marxism and were willing to discuss it before a group.

Mr. Tavenner. And what was the Communist Party purpose in establishing these Marxist groups?

Mr. Davis. They had a double purpose; first, to disseminate Marxism, which is one of their important princi- [fol. 316] ples always and everywhere; and also these were very—it was a very good way of recruiting members into the Communist Party because if members of these study groups seemed convinced of the truth in Marxism, then they were urged to join the party.

Mr. Tavenner. Do you recall any instances in which members of the faculty at Harvard were recruited to the Communist Party through the Marxist group studies?

Mr. Davis. I can't recall the names because I don't remember now by what process the various parties came into the party, but I am sure it was effective in 2 or 3 cases at least.

Mr. Tavenner. Would you describe it as an effective means of recruiting persons into the Communist Party?

Mr. Davis. Extremely effective among intellectuals, yes, because intellectuals ordinarily joined immediately at least for theoretic or intellectual reasons.

Mr. Tavenner. Were those study groups provided in any manner by functionaries of the Communist Party on a higher level?

Mr. Davis. Not directly; no. They encouraged the formation of them, but they left this to the members of the teachers' group who were better able to present it to other teachers.

Mr. Tavenner. Did these study groups include the issuance of Communist Party literature to the individuals and the requirements of study of particular documents and books in which the Communist Party was interested at the time?

Mr. Davis. Yes, but primarily these were the classics, Marx' Das Kapital, the works of Engels, and so on.

Mr. Tavenner. The Communist Manifesto——

Mr. Davis. Yes.

Mr. Tavenner. I assume was one. State and Revolution?

Mr. Davis. Yes.

Mr. Tavenner. Left-Wing Communism?

Mr. Davis. I don't know that they were—that they would deal with quite so a sectarian work with a broad group.

Mr. Tavenner. I believe you said Das Kapital——

Mr. Davis. Yes.

Mr. Tavenner. Was one of the studies.

History of the Communist Party of the Soviet Union?

Mr. Davis. No; that again was a little too immediately a party document and might alienate intellectuals.

We were, however, instructed to distribute that book as widely as possible.

Mr. Tavenner. But you thought it was a little dangerous or the group thought it was a little dangerous to do so until the person invited in had become well indoctrinated in Marxian theory?

Mr. Davis. Yes; that is right.

Mr. Tavenner. Generally.

Did you read and study any of the works of Foster?

Mr. Davis. Foster?

Mr. Tavenner. Yes, the head of the Communist Party of the United States.

Mr. Davis. Not systematically, but members, themselves, were expected to keep up with all the relevant party literature and it was very often brought to meetings for the use of members.

[fol. 317] Mr. Tavenner. I want to read you a paragraph from Towards Soviet America by William Z. Foster, printed in 1932, relating to the subject of education. I quote as follows:

Among the elementary measures the American Soviet government will adopt to further the culture revolution are the following:

The schools, colleges, and universities will be coordinated and grouped under the National Department of Education and its State and local branches.

The studies will be revolutionized, being cleansed of religious, patriotic, and other features of the bourgeois ideology.

The students will be taught on the basis of Marxian dialectical materialism, internationalism, and the general ethics of the new Socialist society.

Present obsolete methods of teaching will be superseded by a scientific pedagogy.

Religious schools will be abolished.

Do you recall having read or having that passage brought to your attention while you were a member of the Communist Party?

Mr. Davis. No. This is the pattern, however, that had been followed in Communist countries and one could assume now, and assume then, it would be followed if a Communist government came into power in the United States; but the Communist line had shifted somewhat in the later 1930's—that was the period when Browder's slogan "Communism Is 20th Century Americanism" was being used—and again the Communists were reluctant to offend those they might bring into the broad united front and they used a somewhat subtler approach.

Mr. Tavenner. The Communist Party, as such, however, was extremely interested in the teaching profession; was it not?

Mr. Davis. Certainly.

Mr. Clardy. Still is; isn't it?

Mr. Davis. I would guess so.

Mr. Tavenner. And let me read you an excerpt from the Communist of May 1937, entitled, "The Schools and the People's Front," by Richard Frank. Richard Frank was a member of the Education Commission of the Young Communist League. He had this to say:

> The task of the Communist Party must be, first and foremost, to arouse the teachers to class consciousness

and to organize them into the American Federation of Teachers, which is the main current of the American labor movement.

In the effort to organize the teachers, every care must be taken to bring together in united front actions all existing teacher organizations. Especial attention must be paid to secure such action with the American Association of University Professors, the National Educational Association, and the Guild. Our party members in these organizations must work actively toward this end.

Well, did your experience in the Communist Party at that time indicate to you that the Communist Party members in those organizations were working——

Mr. Davis. Certainly.

Mr. Tavenner. To that extent?

Mr. Davis. Certainly.

The AUP, as I remember, was not active at Harvard. The energies there were thrown entirely in the Teachers' Union, but what you just read was consistent with my experience of what occurred in the Teachers' Union.

Mr. Tavenner. I continue to read:

Communist teachers cannot afford to ignore this fact: That they come in contact with the children of the masses; that they are responsible for training these children.

[fol. 318] Communist teachers are, therefore, faced with a tremendous social responsibility. They must consider not merely their own teacher problems but the problems of the children. They must take advantage of their positions without exposing themselves to give their students, to the best of their ability, working-class education.

Now, it appears from that the Communist Party had for its objective the influencing of students without the student realizing or knowing that the teacher was, in fact, a Communist Party member.

Well, now, again the reporter is unable to get your answer.

Mr. Davis. Oh, I see. Yes.

Mr. Tavenner. Again, from your experience while a member of the Communist Party for this short time, did you recognize that that was the purpose and the objective of the Communist Party?

Mr. Davis. That was quite clear from the publications of the American Federation of Teachers or some articles in these publications intended for the teachers in the public schools.

As I said this morning, for a variety of reasons at Harvard there was never any direct attempt to influence the teaching in the classes.

Mr. Tavenner. Did any of your students at any time suggest to you that they had concluded that you were a member of the Communist Party?

Mr. Davis. No; as I told the investigator, quite the contrary happened. The year when I was most active as a member of the Communist Party—and it was also a year in which the students were also conscious politically—a politically conscious student came up to me at the end of the year and said he had been trying to figure all year just what my position was, and I think all of us who were at Harvard, who were liberals, had a somewhat ambiguous attitude toward this. We did want to influence our equals intellectually, but we had a lurking feeling that it wasn't quite good sportsmanship to try to influence young people—at least to make use of our position in the classroom to do this.

It seems inconsistent, but I think the evidence of others in that same group will be of the same character.

Mr. Tavenner. Well, I am very glad to know you had that feeling about it, but how can you be certain that all had that feeling?

Mr. Davis. Oh, I can't. I am speaking now only of the group of people in the unit at Harvard, most of whom broke with the Communist Party shortly afterward because at Harvard they were not indoctrinated Communists.

Mr. Tavenner. It is true, however, the opportunity for such influencing existed?

Mr. Davis. It had.

Mr. Tavenner. And it is merely a matter as to whether the Communist Party took advantage of it?

Mr. Davis. And I am quite sure in many places teachers did take advantage of it.

Mr. Clardy. Of course, you are speaking now only within the classroom; you are not talking about activities that may have been indulged in outside of that?

Mr. Davis. Oh, no. The members of this group often addressed political meetings of students.

Mr. Clardy. There they did——

Mr. Davis. Then they did.

[fol. 319] Mr. Clardy. Pardon me.

Mr. Davis. Go ahead.

Mr. Clardy. They did address meetings outside the classroom to accomplish the party objective without any feeling they were running contrary to their conscience?

Mr. Davis. They did address political meetings, yes, and did take the Communist line in these meetings; and students attended these meetings and the prestige of the teacher there would undoubtedly have had an effect.

Mr. Tavenner. Continuing to read from the article mentioned:

> To enable the teachers in the party to do the latter——

And by "latter" is meant the teaching of the working class, the giving of a working-class education——

> the party must take careful steps to see that all teacher comrades are given thorough education in the teachings of Marxism and Leninism.
>
> Only when teachers have really mastered Marxism and Leninism will they be able skillfully to inject it into their teaching at the least risk of exposure and at the same time to conduct struggles around the schools in a truly Bolshevik manner.
>
> Such teachers can also be used to advantage to conduct classes in Marxism, Leninism, for workers generally, and many such teachers should be assigned not to school units but to factory or industrial units where they can have great aid in party education in helping with leaflets, shock papers, and so forth. Others can play an important role in the educational activities of the Young Communist League.

Now, do you know, from your experience, whether any members of your group taught Marxist-Lenin classes in industry or in any group outside of the faculty at Harvard?

Mr. Davis. Yes; I think they certainly did go to lecture to groups in various outlying suburbs.

Mr. Tavenner. What was the nature of those group meetings they attended? Were they regular Marxist classes?

Mr. Davis. In some cases, yes, corresponding to the classes that were run for teachers. Teachers would also be asked to go to places like Revere and Chelsea and speak to study groups.

Mr. Tavenner. Now, can you be more definite as to the places at which some classes were conducted?

Mr. Davis. No; I can name only the towns. They are the industrial towns around Boston where there were Communists in the unions at that time, and the Communists in the unions would organize Marxist study groups just as the teachers did, and from time to time individual teachers would be asked to come and speak to those Marxist study groups.

Mr. Tavenner. How were those invitations extended? Were you directed to go by a higher functionary of the party or was it just on invitation?

Mr. Davis. It was done——

Mr. Tavenner. On the rank-and-file members?

Mr. Davis. In a more or less personal way, yes. Trade union organizers would meet teachers in various front organizations and would ask them to come and speak.

Mr. Tavenner. I would like to read one more paragraph from this article:

> In rural communities teachers who are among the few educated people are looked up to with tremendous respect. They are in a position to become community [fol. 320] leaders. As a means of mobilizing the people in the villages and countryside, steps should be taken to try to send Communist teachers into rural communities where they should become active in all community organizations.

Did you have any experience with a matter of that kind?

Mr. Davis. No; my activities didn't extend that far.

Mr. Tavenner. Now, will you advise the committee of any other matters relating to your study groups and your programs as conducted in your meetings which would throw any light upon the activities of your organization?

Mr. Davis. No; I don't think I can add anything significant.

A great deal of time was spent in going over the names of persons who might be sympathetic to the party and might be drawn closer to its activities.

Mr. Tavenner. Now, do you recall that your group engaged in the preparation of any pamphlets for use by the Communist Party?

Mr. Davis. Yes, Granville Hicks and I collaborated on a pamphlet against anti-Semitism.

Mr. Tavenner. Was Granville Hicks a member of your group?

Mr. Davis. For 1 year.

Mr. Tavenner. Of the Communist Party?

Mr. Davis. For 1 year; yes.

Mr. Tavenner. I should state, Mr. Chairman, that Mr. Granville Hicks has cooperated with the investigators of the committee and we are expecting his full cooperation and that, according to our investigation, he withdrew from the Communist Party at approximately the same time that the witness did and that he's been active in his opposition to the Communist Party ever since.

Mr. Velde. I take it, from your testimony so far, Mr. Davis, that you also have been active against communism since your withdrawal?

Mr. Davis. Yes; I have some quotations from my published writings here if anyone wishes to see them.

Mr. Tavenner. I am going to ask you about that in a few minutes.

Now, did you submit the material which you were proposing to use in pamphlet—that is, you and Mr. Granville Hicks—to any functionary of the Communist Party for review?

Mr. Davis. Yes; Phil Frankfeld went over it with great care and attention.

Mr. Tavenner. Do you know whether Phil Frankfeld, himself, was capable of giving it the criticism that was given it or whether he, in turn, transmitted the material on to some higher functionary of the Communist Party, such as V. J. Jerome, who was about that time the cultural head of the Communist Party?

Mr. Davis. He may have but I don't think this was important enough from their point of view. His suggestions were largely political. I think he was a high enough functionary so that he would have been entrusted with that responsibility.

Mr. Tavenner. Did you have a memorandum in relation to that matter?

Mr. Davis. Yes; I submitted——

Mr. Tavenner. Which you submitted to the committee?

Mr. Davis. Yes.

Mr. Tavenner. I hand you a document which I will ask be marked "Davis Exhibit 1" for identification only, and ask you whether or not that is the document to which you refer.

Mr. Davis. It is.

[fol. 321] Mr. Tavenner. I desire to offer the document in evidence and ask that it be marked "Davis Exhibit No. 1"

Mr. Velde. Without any objection, it will be received.

(Said document was received in evidence as "Davis Exhibit No. 1.")

Mr. Tavenner. Now, I desire, Mr. Chairman, to read this comment in evidence because it points out the approach of the Communist functionary not only to the particular subject under consideration, but to writings generally.

Comment

Excellent material; the historical material and quotations are well selected and introduced.

The conclusions are not sharply drawn. The argumentation remains somewhat suspended in the air.

There is completely defensive argumentation on the question of the Jews and communism. There must be a straight-forward presentation of the right of Jews to be revolutionists. The argument of the pamphlet

follows almost exactly that of the American Jewish Congress.

The point should be introduced about the support given by the rich Jews to Hitler in his first stages of development. The poor Jews supported the Communist Party. There is no sufficiently sharp line drawn between the rich Jews and the poor Jews. A good illustration of this point would be the Boston garment workers' strike of 1936 when the Jewish bosses called out the Irish cops to club Jewish and Italian workers indiscriminately.

More facts should be introduced about numbers of Jews on relief, and so forth.

There is very little appeal made to the Protestants; also, the section on the Catholics should be strengthened.

At the close, introduce the relationship of anti-Semitism and the American reaction today. Illustrate the use of anti-Semitism against even Roosevelt, against Lehman in the recent election campaign. Point out that the only answer of Jews to Coughlin must be to identify themselves more and more with the progressive camp, against reaction and Red-baiting, for the building of a strong peace movement, which is, itself, the struggle against fascism and anti-Semitism. Raise the question of the unity of the labor movement and building it, the support for social and labor legislation as the truest basis for democracy and the elimination of the basis for anti-Semitism.

Mr. Jackson. Will counsel identify that again? Is this the critique by Frankfeld on the work you had done, Mr. Davis?

Mr. Davis. Yes; the rough draft of the pamphlet.

Mr. Jackson. Were those suggested changes incorporated in final draft?

Mr. Davis. I believe so.

Mr. Jackson. Thank you.

Mr. Tavenner. Professor Davis, we have ascertained by a very definite evidence in the course of our hearings in Hollywood of the effort made by the Communist Party to put

its members, who are writers, in a mental straitjacket in determining how they shall write and how they shall treat their subject. Did you have any experience with the Communist Party in writing other than this?

Mr. Davis. No; this the only indication which I remember direct advice of this sort, because I think this is the only work I did under Communist Party control of this nature.

Mr. Tavenner. Were you given to understand that your work had to be acceptable?

Mr. Davis. Yes.

Mr. Tavenner. To the higher functionaries of the Communist Party?

Mr. Davis. But, of course, at that time we, ourselves, tried to make it conform to the line because we accepted the line. [fol. 322] Mr. Tavenner. Now, let us go to the third and last division of the activities of your group—that of fund raising.

Now, will you tell the committee what the activities of your group were in that respect?

Mr. Davis. The party was extremely greedy for money. Not only did we pay quite large dues, but extra donations or assessments were constantly being made. All sorts of means were being used to raise money, by having parties, dances, lectures, and so on. This was a very large part of our activity.

Mr. Tavenner. What were the dues that you paid?

Mr. Davis. As I recall correctly, they were 5 percent of one's salary.

Mr. Tavenner. Why, they charged you more than they did the directors in Hollywood. It was only 4 percent there.

Mr. Clardy. The directors' salaries were slightly larger than yours, weren't they?

Mr. Davis. Yes.

Mr. Tavenner. Did all the members of your group pay 4 percent of their salary while members?

Mr. Davis. It may have been graduated according to the size of the salary. That I don't remember; but, in my own case, it seems to me 5 percent was the amount.

Mr. Tavenner. Then, were special assessments made for particular projects of the Communist Party?

Mr. Davis. Constantly. It was always represented that the Daily Worker or some other magazine was in a state of emergency and that extra efforts must be made to obtain money.

Mr. Tavenner. Well, who was the contact with your committee on matters of that kind?

Mr. Davis. Whoever was moving between us and the central office of the party—people like the ones I mentioned this morning, such as Hy Gordon or Margot Clark.

Mr. Tavenner. How do you spell Clark?

Mr. Davis. C-l-a-r-k.

Then, also, we raised money for Spain, but a good deal of that, I suspect, went actually to the party, not to Spain.

Mr. Tavenner. What reason do you have for stating that much of the funds raised for Spain or Spanish relief were used by the Communist Party for its own purposes?

Mr. Davis. I didn't know at that time. It was just as a result of subsequent revelations.

Mr. Tavenner. Tell us a little more in detail about these special assessments for the benefit of the Daily Worker and other——

Mr. Davis. Sometimes——

Mr. Tavenner. Communist Party enterprises.

Mr. Davis. Sometimes it was a definite assessment. That is, each member was expected to give the equivalent of his dues—I mean an additional amount the equivalent of his dues. Sometimes it was voluntary, just asking for money; sometimes members were instructed to approach sympathizers and ask them to give money—not to the party, but to some cause, like a magazine or Spanish relief.

Mr. Tavenner. At an earlier point in your testimony you identified Bill Parry as a person who was known to you to be a member of the Communist Party. What was the basis of your knowledge?

Mr. Davis. Participation in unit meetings.

[fol. 323] Mr. Tavenner. Was he a member of your individual group?

Mr. Davis. Yes.

Mr. Tavenner. Were you acquainted with Jack Rackliffe——

Mr. Davis. Yes.

Mr. Tavenner. R-a-c-k-l-i-f-f-e?

Mr. Davis. Yes.

Mr. Tavenner. Was he a person known to you to be a member of the Communist Party?

Mr. Davis. Yes.

Mr. Tavenner. On what do you base your information, your knowledge?

Mr. Davis. Appearance at a large number of Communist unit meetings.

Mr. Doyle. Which meetings you also attended——

Mr. Davis. Yes.

Mr. Doyle. With him?

Mr. Davis. Yes.

Mr. Tavenner. Was that your own group or cell of the Communist Party which you previously identified?

Mr. Davis. Yes.

Mr. Tavenner. Were you acquainted with a person by the name of John Henry Reynolds?

Mr. Davis. Yes, and I recall that one of the emergency meetings I spoke of that occurred after the pact was held at his house.

Mr. Tavenner. And I should ask you at this time if you know of your own knowledge that any of these persons have since terminated their affiliations with the Communist Party, that you should state so.

Mr. Davis. I surely will.

Mr. Tavenner. Up to this point, you have no knowledge?

Mr. Davis. No, except in the case of Granville Hicks.

Mr. Tavenner. Yes.

Daniel J. Boorstin?

Mr. Davis. He was a member, but I know he has broken long since.

Mr. Tavenner. And, Mr. Chairman, Dr. Boorstin, according to our investigation, did withdraw many years ago from the Communist Party and has cooperated and is cooperating with this committee in giving it the benefit of information he has and, like this witness, has been an outstanding opponent of communism since taking that action.

Richard Schlatter?

Mr. Davis. Yes; he was also a member.

Mr. Tavenner. Of this same group?

Mr. Davis. Yes.

Mr. Tavenner. And what I had to say about Mr. Boorstin stands equally for Richard Schlatter.

Were you acquainted with Richard Goodwin?

Mr. Davis. Yes; he also was a member of the group of the Communist Party.

Mr. Tavenner. Do you have any information as to whether or not he has withdrawn from the Communist Party?

Mr. Davis. I don't know directly, but all impressions I've gathered would lead me to suppose so.

Mr. Tavenner. Were you acquainted with a person by the name of George Mayberry?

Mr. Davis. Yes; he was a member of the group.

[fol. 324] Mr. Tavenner. Of this same group?

Mr. Davis. Yes.

Mr. Tavenner. Are you acquainted with Israel Halperin?

Mr. Davis. Yes.

Mr. Tavenner. H-a-l-p-e-r-i-n—Halperin.

Mr. Davis. I am. Yes, I was. He was a member of the group.

Mr. Tavenner. When did you first become acquainted with him?

Mr. Davis. I'm not sure. I don't think he was a member when I first joined. It must have been the next academic year.

Mr. Tavenner. Was there anything outstanding or unusual about his contribution to the work of the Communist Party in your group, while you were a member?

Mr. Davis. No; I don't recall any. I remember him very well. I know he was interested in the foundation of the magazine of Science and Society, but was also very critical of the editors of it.

Mr. Tavenner. Do you know where he is now?

Mr. Davis. I know of his subsequent history from the accounts of the Canadian spy investigations. I know he was involved in that case but not convicted.

Mr. Tavenner. He is in Canada today now?

Mr. Davis. I assume so.

Mr. Tavenner. Herbert Robbins?

Mr. Davis. He was a member the first year I belonged. He left Harvard the second year. I have every reason to believe, on the basis of a long conversation with him 3 years ago, that he broke perhaps before I did.

Mr. Tavenner. Were you acquainted with Rubby Sherr—S-h-e-r-r?

Mr. Davis. Yes; he was a member of the group for a comparatively short time, but I think he was still a member when I left.

Mr. Tavenner. Or Wendell Furry—F-u-r-r-y?

Mr. Davis. I knew him very well. He was a member of the group.

Mr. Tavenner. Was he a member of the group when you left Harvard?

Mr. Davis. Yes—not when I left Harvard. I have no way of knowing when I left Harvard because I left Harvard 3 years after I left the party, nearly 4 years.

Mr. Tavenner. Oh, yes, but was he a member of the party when you left the party?

Mr. Davis. Yes.

Mr. Tavenner. Are you acquainted with the Henry Thoreau professional section of the Communist Party?

Mr. Davis. No; I never heard of that, to my knowledge.

Mr. Tavenner. During the period of your experience in the Communist Party did you learn whether members of the Communist Party from England, who were in attendance at universities in this country, on any occasions would have their membership transferred to the Communist Party of the United States?

Mr. Davis. I recall a Henry fellow, I believe he was called—a Henry fellow—who came to our unit when he was doing graduate work at Harvard. I do not recall his name now.

Mr. Tavenner. Do you know of any other occasions when students from England were transferred to membership in the Communist Party in the United States?

[fol. 325] Mr. Davis. There may have been two of these Henry fellows, of that I can't speak certain, but that is the only connection I recall.

Mr. Tavenner. Now, I asked you in the beginning of your testimony whether or not you had been active in your opposition to the Communist Party since you withdrew, as you have indicated. What in general has been the nature of your work against the Communist Party?

Mr. Davis. It's been partly organizational, but mostly literary. I resigned in protest from the League of American Writers early in 1940, because of their attitude toward Hitler and the war.

When I went to Smith, I joined the Teachers' Union and struggled against the group there, led by Dorothy Douglas and Katherine Lumpkin, but the union took an increasingly Wallacite position in the later forties, and I resigned from the union in protest in 1948. I was one of the 88 intellectuals who signed the statement published in the New York Times on March 24, 1949, calling attention to the true nature of the Waldorf Scientific and Cultural Conference.[1]

I have been from the beginning a member of the Committee for Cultural Freedom, headed by Sidney Hook, and have contributed to Partisan Review of the Commentary and the New Leader, all magazines which have for years fought Stalinism with informal intensity.

I have written for the New York Times regularly for the book review section over the past 10 years, and I have here quotations from articles which state my present devotion to democracy in unqualified terms.

I wrote for the magazine, Commentary, only a year ago, in May 1951, an article on Soviet psychiatry, showing the relationship between Soviet psychiatry and the destruction of the individual.

May I read three sentences from that?

Mr. Tavenner. Yes, sir.

Mr. Davis. There is a review of a book by Dr. Wortis called Soviet Psychiatry, and I say:

> But what Dr. Wortis's book emphatically demonstrates—if it needed demonstrating—is the iron logic

[1] Scientific and Cultural Conference for World Peace, arranged by the National Council of the Arts, Sciences, and Professions, held at the Waldorf-Astoria Hotel in New York City, March 25, 26, and 27, 1949.

> behind communism's utter extinction of the individual self. This logic is orthodox in theory—it is explicit in Marx, Engels, and Lenin—and it has been appallingly proved and demonstrated in practice. The confessions of opponents of the regime at Communist trials show that by "immediate pressure of the environment—"

That is quote——

> by torture, narcosis, hypnosis, and indoctrination in various combinations, the self's organic past can actually be negated, and that it can be made to "reflect" completely the party-partisan view of reality. Since those who do not come to reflect this reality are considered ultimate enemies of the people, there is no moral limit to the use which may be made of these psychological, physical, and medical means of extinguishing the self.

And then I say later on at the end of the article:

> A genuine struggle against Russian antihumanism should require our putting as much effort as we possibly can into discovering what social and political grounds still exist—or can be made to exist—in our contemporary society for the survival of what David Riesman calls the autonomous individual.

And then I go on to develop that view.

[fol. 326] Mr. Tavenner. When was that written?

Mr. Davis. That was written in May 1951, but I have citations of earlier articles along the same line.

Mr. Tavenner. Mr. Chairman, I think that is all I desire to ask, unless the witness has something else to add that he may want to add——

Mr. Davis. No.

Mr. Tavenner. To his testimony.

Mr. Davis. As I said this morning, I think such investigations are necessary, if they are carried out fairly and scrupulously. All I am afraid of is that so much energy, political energy, may be directed toward a preoccupation with the past, that we may not have enough left to find

creative solutions for problems that face us in the future.

I think, for instance, that it's right to go back into the history of China and find out why that disaster occurred, and whether it occurred as the result of espionage of improper influence by Communists within the Government, but we want to be sure that this will help us to solve the problems of India and Africa, for instance.

It's not enough to discover what went wrong in China.

We've got to keep the same thing from happening in other parts of the world, and it is this danger with which I, myself, am preoccupied at the present time.

Mr. Clardy. You mean we should profit from our past mistakes?

Mr. Davis. We've got to profit from our experience and not let India, Africa, and Europe go as China went.

Mr. Velde. Mr. Davis, we certainly do appreciate your coming before the committee. Are those documents which you have there available to the committee for its files or references?

Mr. Davis. Yes.

Mr. Velde. We will be glad to accept those into our files for study of our investigators and counsel whenever necessary.

Now we have another witness to appear this afternoon, but I think some of the members might want to ask you a few questions, Mr. Davis, and the Chair would very much appreciate it if the members of the committee would limit their examination of Mr. Davis so that we might hear the other witness.

Proceed with the questions you might have.

Mr. Jackson.

Mr. Jackson. I shall try to make my questioning brief, Mr. Chairman.

Mr. Davis, I am not asking you to enter into the realm of opinion, but out of your own experience in the Communist Party during the period of time you were a member to what extent would you say that one submits himself to the expressed or implied discipline of the Communist Party?

Mr. Davis. This is often, I believe, a motive for joining because those who join desire certainty. They want a line

which will give them a sense of significant action. The Communists always have an answer to everything. The answers aren't always very good, but he does have an answer. This is part, unquestionably for many people—the part of the psychological satisfaction of being a Communist.

Mr. Jackson. In the event of a mental conflict, having to do with some philosophical position, what resolution of the problem would be expected by the Communist Party?

[fol. 327] Mr. Davis. The member has got to work through to an acceptance of the line.

Mr. Jackson. That is definitely understood——

Mr. Davis. Yes.

Mr. Jackson (continuing). By both the member and the Communist Party.

Do you believe, sir, that a member of the Communist Party today is equally subject to the type of discipline that we have been discussing?

Mr. Davis. Much more so because, it seems to me, what is going on in Communist countries now is so inconsistent with ordinary humanity or ordinary reason that a person must have to force himself to accept it; and I think in many cases it happens because a Communist Party member has given up his life for the party over a great many years. If he left the party, he would be nothing. So, he stays in, even though much that is going on is unacceptable to him as a normal man.

Mr. Jackson. In light of that understood acceptance of the discipline, could a Communist teacher or professor today be an objective pedagog?

Mr. Davis. As I said this morning, in certain areas he still could because people are capable of divided minds; but I don't think this could happen in the social sciences, and I think he would undoubtedly be influenced even in the humanities. In the sciences, this might not happen at all.

Mr. Jackson. Would you say the keystone of education is the ability of a teacher or a professor to present his subject with absolute objectivity?

Mr. Davis. I don't think absolute objectivity is possible for anyone except a scientist. I think often a teacher is a better teacher because he does have convictions. His teaching is more interesting. The students have something to

relate what they're learning to. It's a question again of degree, of the fairness of the teacher.

Mr. Jackson. We have heard a great deal, Professor Davis, on the subject of "academic freedom." I am not quite certain that I, for one, understand actually what is meant by "academic freedom." Could it be summed up very briefly?

Mr. Davis. No; I should think it would be very difficult to try, but it is related to what I was just saying, that the interest of teaching depends partly on the freedom of play of ideas. The teacher himself and the student should be able to approach ideas from the different points of view within the classroom; but, also, the greatest teachers in the past, from the time I think of Plato and Aristotle, have been men with convictions, with a coherent body of beliefs which they presented to the students, and these are often different beliefs from those held by members of the same department, but in a large university a student going from class to class can absorb these structures of ideas, can play them off against each other, can come to his own opinions.

Mr. Jackson. Have any questions been asked of you today, Professor Davis, which you would consider to be an infringement of academic freedom as distinguished from the charge upon this committee of investigation?

Mr. Davis. No; definitely not. But I do think——

Mr. Jackson. Is it my understanding, to sum up——

[fol. 328] Mr. Davis. If I may add one thing——

Mr. Jackson. Yes.

Mr. Davis. I do think the loose use of the word "Communist" in the last 4 or 5 years has made teachers in some colleges and universities afraid to speak out on controversial questions for fear they may be called Communists. I think a certain amount of timidity exists now that didn't exist in the past.

Mr. Jackson. To sum up the substance of your presentation today, I think the committee can assume from the testimony that the Communist Party did:

(1) Make an effort to recruit teachers and professors into the Communist Party?

Mr. Davis. Yes.

Mr. Jackson. (2) Having recruited them, the party did, by directive or otherwise, lay down certain broad policies which these teachers and professors were expected to follow:

Mr. Davis. Yes.

Mr. Jackson. (3) The Communist Party expected teachers, professors, and others in education, to infiltrate other teacher groups with the idea of putting forward policies and directives enunciated by the Communist Party?

Mr. Davis. Yes.

Mr. Jackson. And (4) to exercise generally, on behalf of the Communist Party, what influence they could?

Mr. Davis. Yes.

Mr. Jackson. And (5) to influence, to the extent possible, the election of group leaders and others within the popular front who were individuals known to be favorable to the policies of the Communist Party?

Mr. Davis. Yes.

Mr. Jackson. Is there any reason to believe, Professor, that the Communist Party line, with respect to education in general, has in any way changed since it was enunciated by Lenin?

Mr. Davis. No.

Mr. Jackson. I should like to add a word of thanks. I think, Professor Davis, you have rendered a tremendous service to the committee and to the country in your very able and lucid presentation here today. It would be my hope that no reprisals—economic, political, or professional—would be visited against you by any person because of your testimony here today. Thank you very much.

Mr. Davis. Thank you.

Mr. Velde. Mr. Clardy.

Mr. Clardy. May I join with my colleague in saying that—to go one step further—I think the kind of contribution you are making, sir, is probably one of the most effective strokes against communism that can possibly be made; and, speaking now for myself, as a new member on this committee, I want you to know I am delighted to have had you before me as the first witness we have had the pleasure of interrogating.

But now, another subject, briefly: You gave me an interim answer which got a little laughter earlier when I suggested you tell us whether our conduct was such that you approved. You said it had been up to that time. As I phrased the question, do I understand your answer to Mr. Jackson [fol. 329] as being that you now, we having concluded, are willing to say that you do think the manner in which we have conducted this is wholesome and good?

Mr. Davis. Yes; I am entirely willing to say that.

Mr. Clardy. You also said something in answer to Mr. Jackson that I would like to explore just very briefly. You were talking on the subject of academic freedom and, while I digress, I assume it is not your intention, any more than that of the committee, to attack either the colleges or the groups as a whole into which Communists have infiltrated as described by you; am I right in that assumption?

Mr. Davis. Yes.

Mr. Clardy. Of course, you understand we are not interested in trying to smear or besmirch the name of anybody, any individual, school, or institution. Heaven knows in my own profession, as a lawyer, what the lawyers have to contend with—and if there is any worse than that, I don't know what it is; but, at any rate, you indicated in the field of academic freedom there might be a little dangerous ground, we would have to tread lightly, and you have approved the way we are treading so far, but isn't it true that one who professes to be and actually is a Communist is a little bit different from those who adhere to Plato or Aristotle's teachings, or someone else? Isn't he a dangerous person to be at loose in the field of education?

Mr. Davis. Yes. In this statement I have one sentence as follows: "I do not think we should allow the language of liberalism and democracy to be used by those who would destroy liberalism and democracy." That is, I think the Communists necessarily in universities today are dishonest in what they say, whereas Aristotle and Plato were honest.

Mr. Clardy. And is not what you are doing and what this committee is doing directed toward and should be directed toward exposing those persons and those motives and the controls that are exerted over those persons?

Mr. Davis. Yes; I do. I think this dishonesty should be exposed.

Mr. Clardy. What I am leading up to is this: You probably read the piece in last night's paper and in this morning's paper by Bishop [G. Bromley] Oxnam attacking us rather severely, attacking us before we two freshmen members here had a chance to perform at organizing or saying anything and using what I rather regarded as the Communist method of smear. Now, I am just asking you: Don't you think the kind of exploration we have undertaken and carried on here today can and will serve a useful purpose despite what the eminent gentleman of the cloth may have said?

Mr. Davis. As long as groups of individuals do not misuse some of the testimony.

Mr. Clardy. Well, as I understand it——

Mr. Davis. Yes.

Mr. Clardy. You agree it has not been misused here today?

Mr. Davis. Yes; I agree.

Mr. Clardy. If we follow the pattern here of today, will you not say we are serving a most useful purpose in the defense of our country?

Mr. Davis. Yes; and if you speak out when others do misuse any of this testimony.

Mr. Clardy. I want to agree with you, and I am sure the rest of the members of the committee do, that we will at no [fol. 330] time attack teachers as teachers, schools as schools, churches as such, nor any of the other groups.

We are merely aiming at the very thing you are talking about, and I again want to thank you and say the people in your home community ought to be proud to have one who is willing to stand up and be counted in this terrific battle against the very dangers of the ages—it is godless communism against all the rest of us.

Mr. Velde. Mr. Scherer?

Mr. Scherer. I have no questions.

Mr. Velde. Mr. Doyle?

Mr. Doyle. Professor Davis, I wrote down here that you used this language in answer to one question:

I feel that being here today is an unpleasant duty, but one I must accept.

I am not sure I know just how to ask you supplemental to that what I want to know or get this from your fine thinking, but why did you feel it was a duty to come? Why did you feel you must accept it? What compelled you to come in and cooperate with this committee instead of pleading the first or fifth amendment or something?

Mr. Davis. Because I broke with the Communist Party 13 years ago because I could not stand the dishonesty and equivocation that we were inseparable from, being a member of the party, expressing one's doubts, pretending to other people a certainty which one really did not feel. I felt I would have spoken out at any time in these 15 years, but since I was summoned now, I was glad to use this opportunity to clear the record and say what I believed.

Mr. Doyle. Well, why don't more men of your mental capacity feel the same way and come forward and testify as you have?

Mr. Davis. Prejudice has been built up over the years, partly by the Communists themselves, but also for reasons that are quite understandable to anyone who has to see the operations of an honor system in colleges, a prejudice against informing. I think the American people generally dislike informers.

Mr. Doyle. May I ask one more question?

Under Public Law 601, which is the statute under which this committee is assigned a definite duty, one of our duties is to go into all questions with reference or relation to subversive and un-American propaganda which may aid in any necessary remedial legislation. Now, that is, I think, the exact wording of the last section of the statute under which we operate.

Have you anything to suggest to us which would help us in the field of remedial legislation on the subject of subversive propaganda or activities in our Nation?

Mr. Davis. No; I don't think my training really equips me to make a valuable suggestion there. I've had so little experience with law and legislation.

Mr. Doyle. May I ask you this one further question then? Did more than just you leave that cell at the university

when you left? I mean, was there any agreement between you and others that they would leave? Did others also open their eyes and come to feel that the Communist Party was dishonest, or were you the sole member of the cell that resigned at that time?

Mr. Davis. Two things happened: First, a member or members of the unit left to go to other colleges in the nor- [fol. 331] mal course of their academic advancement, and I think instead of breaking formally with the party, they simply didn't join where they next went.

Others, I know, from testimony that will be given to you after I have left the stand, broke with the party in the weeks and months following, but my own leaving was an entirely individual matter. I came to these conclusions by myself.

Mr. Doyle. You mentioned 2 or 3 books and pamphlets, periodicals, that were published by or for the Communist Party. Have you in mind any small list of papers and periodicals that you believe now are the mouthpiece of the Communist Party in this country?

If you have, could you leave it with our committee so that we may have the benefit of it?

Mr. Davis. I'll do that, although I don't think I could add to what the investigators know.

Mr. Doyle. Thank you very much.

Mr. Velde. Mr. Frazier?

Mr. Frazier. No questions, Mr. Chairman, but I would like to take this occasion to thank the professor for the information and fine cooperation he has given the committee on this occasion.

Mr. Davis. Thank you.

Mr. Velde. Mr. Davis, I wanted to ask a few questions along the line of Mr. Clardy's questioning.

With reference to religion particularly, is there any question in your mind that if the Soviet Government and the American Communist Party were able to establish a philosophy of thinking here in the United States of America, that we would have any of our religious freedom left?

Mr. Davis. No; the destruction might be gradual for political reasons, but it would occur in time, if they could convince the young people that Marxist dialectic was the

true philosophy, because Marxist dialectic is inconsistent with a belief in religion.

Mr. Velde. Why, then, if communism is known to advocate destruction of religion all over the world, would so-called religious leaders—like Bishop [G. Bromley] Oxnam, Dr. Sayre,[3] and Reverend Davies[4]—oppose the efforts of this committee to expose communism and uphold freedom of our people to worship God as they please?

Mr. Davis. I don't think I could really enter into the motives.

Mr. Velde. Well, for the life of me I am not able to determine that either, but it seems that every time we hold an investigation, certain people do take opposition to our hearings, the manner in which we conduct them, and cite many facts which I believe, as you have so ably described, are untrue, and I want to say now I appreciate the compliment which you gave to this committee when you said you felt sure we were not interfering with the academic freedom or freedom involved in in any way.

It is a great pleasure and privilege for members of the committee to listen to you in your very fine statement which you made today. I am sure it is very valuable to this committee in its efforts to determine facts regarding Communist infiltration into education.

Now, we have had a formal call,[2] I believe, so we will stand in recess for 30 minutes.

[fol. 332] (Thereupon, at 3:33 p. m., the hearing was recessed, to reconvene at 4:05 p. m., the same day.)

* * * * * * *

[fol. 337] Mr. Kearney. The witness is excused.

The next witness, Mr. Counsel.

Mr. Tavenner. Mr. Granville Hicks.

Mr. Kearney. Mr. Hicks, do you swear that the testimony you will give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

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[2] Quorum call from floor of United States House of Representatives.

[3] Very Rev. Francis B. Sayre, Jr.

[4] Rev. Dr. A. Powell Davies.

Mr. Hicks. I do.

Mr. Kearney. You will be seated, please.

TESTIMONY OF GRANVILLE HICKS

Mr. Tavenner. You are Mr. Granville Hicks?

Mr. Hicks. Yes.

Mr. Tavenner. Are you represented or accompanied by counsel?

Mr. Hicks. No.

Mr. Tavenner. Do you desire counsel?

Mr. Hicks. No.

Mr. Tavenner. When and where were you born, Mr. Hicks?

Mr. Hicks. I was born in Exeter, N. H., on the 9th of September, 1901.

Mr. Tavenner. What is your present occupation?

Mr. Hicks. I am a free-lance writer.

Mr. Tavenner. Will you state for the committee, please, what your formal educational training has been?

Mr. Hicks. I was educated in the public schools of New Hampshire and Massachusetts. I did undergraduate work at Harvard and was graduated in 1923 with my A. B. degree. From 1923 to 1925 I was at Harvard Theological School.

You want only education now?

Mr. Tavenner. Yes.

Mr. Hicks. In 1928-29 I was back at Harvard and took my master's degree in English.

Mr. Tavenner. Excuse me. What was the date when you obtained your degree at Harvard?

Mr. Hicks. 1929. My A. B. degree in 1923; my master's degree in 1929.

[fol. 338] Mr. Tavenner. Will you tell the committee, please, what your work record or employment record has been since the completion of your formal education.

Mr. Hicks. Well, from 1925 to 1928 I was an instructor at Smith College. Then I went back to Harvard in 1928-29, as I have already said; and from 1929 to 1935 I was assistant professor of English at Rensselaer Polytechnic Institute in Troy. Since then I have had—no, I am sorry——

Mr. Tavenner. Will you spell the name of that school, please?

Mr. Hicks. R-e-n-s-s-e-l-a-e-r.

Mr. Tavenner. Rensselaer?

Mr. Hicks. Rensselaer.

Mr. Tavenner. And try to elevate your voice a little, if you please?

Now you were at Rensselaer College to 1935?

Mr. Hicks. 1935. Yes.

Mr. Tavenner. And from 1935 on how were you employed?

Mr. Hicks. Well, except for 1 year in that period I have been a free-lance writer. In the year 1938-39 I was a counselor in American civilization at Harvard College.

Mr. Tavenner. Mr. Hicks, you have appeared at a prior time before a subcommittee of this committee in executive session, have you not?

Mr. Hicks. Yes, sir.

Mr. Tavenner. You have advised the committee of most of the facts, I suppose, that you have within your recollection.

Mr. Hicks. Yes, sir.

Mr. Tavenner. Regarding your experience while a member of the Communist Party?

Mr. Hicks. Yes.

Mr. Tavenner. When did you become a member of the Communist Party?

Mr. Hicks. In the winter of 1934-35.

Mr. Tavenner. And how long did you remain a member?

Mr. Hicks. Until September 1939.

Mr. Tavenner. Since September 1939 have you been affiliated with any activities of the Communist Party, to your knowledge?

Mr. Hicks. Not if I knew it.

Mr. Tavenner. What has been your attitude and your record since 1939 with reference to the Communist Party?

Mr. Hicks. I have been, I think, consistently anti-Communist.

Mr. Tavenner. Will you tell the committee, please, the circumstances under which you first became a member of the party?

Mr. Hicks. Well, I had been a rather close fellow traveler for a period of 3 or 4 years; so close that I was actually an editor of the New Masses, which was, of course, a Communist magazine. I was an editor at a time when I was not a member of the party. It was very natural that I should be at some point or other recruited into the party. And when I was asked, in the winter of 1934-35—and it may have been December 1934, or January or February 1935, I don't remember—but when I was asked, I immediately agreed to join the party, and I did so.

Mr. Tavenner. Was that in the city of New York?

Mr. Hicks. That was in the city of New York.

Mr. Tavenner. Were you then employed as an editor of New Masses?

[fol. 339] Mr. Hicks. Well, employed is not the right word, since the New Masses never paid anything. I was an editor of the New Masses. I was employed at that time at Rensselaer Polytechnic Institute.

Mr. Tavenner. How long had you been on the editorial staff of the New Masses before you were invited into the party?

Mr. Hicks. Approximately a year. I became the literary editor of the New Masses when it was made a weekly in January 1934.

Mr. Tavenner. Who asked you to become a member of the party?

Mr. Hicks. Bernhard Stern.

Mr. Tavenner. Bernhard Stern. How was he employed?

Mr. Hicks. He was employed in some capacity at Columbia University. I don't know what his rank was.

Mr. Tavenner. Was he a teacher?

Mr. Hicks. Yes. I think so.

Mr. Tavenner. Tell the committee the circumstances under which he asked you to become a party member.

Mr. Hicks. I was living—I was not living in New York at that time. I was living in Troy. As I remember, he wrote and asked me if I would have a meal with him the next time I came to the city. I did so. We had dinner together and he simply asked me if I didn't feel I was now ready to join the party; and after we discussed it a little while I said that I did feel so.

Mr. Tavenner. Were you then assigned to a special group or any particular group of the Communist Party?

Mr. Hicks. Well, he took me to the group to which he belonged.

Mr. Tavenner. Then you became a member of the same group or unit of which he was a member?

Mr. Hicks. That is true; which was a group of professional people, writers mostly, in New York City.

Mr. Tavenner. Were there any other members of the teaching profession, members of that group, other than Prof. Bernhard Stern?

Mr. Hicks. Not to the best of my recollection. I think there were not any other teachers.

Mr. Tavenner. What was the activity in which that group engaged?

Mr. Hicks. My impression is I only attended one or two meetings because of not living in the city and not having to be there, and not happening to be there at the time when the group was meeting. I remember that at one meeting I attended there was a good deal of talk about preparations for the first Congress of American Writers. That is the only specific subject I can remember our discussing.

Mr. Tavenner. Did you become a member of the first Congress of American Writers?

Mr. Hicks. Yes. I presided, I think, at the opening meeting of that congress.

Mr. Tavenner. Was that an open meeting—open to the public generally?

Mr. Hicks. Yes.

Mr. Tavenner. It was a matter that was public knowledge in the city of New York and carried in the newspapers?

Mr. Hicks. Oh, very, very much so.

Mr. Tavenner. Were the other members of that Communist Party group to which you were assigned also members of that writers conference?

[fol. 340] Mr. Hicks. I think so. The first Congress of American Writers led, as I recall it, to the formation of the League of American Writers, an organization that went on for a number of years. My guess would be that all of the members of the group I belonged to were also members of the League of American Writers. I know that some of them were.

Mr. Tavenner. What was the approximate date of the first Congress of American Writers over which you presided?

Mr. Hicks. April or May 1935.

Mr. Tavenner. How long did you continue active in that organization?

Mr. Hicks. Only until the following summer. You mean now the party group I belonged to?

Mr. Tavenner. I was referring at the moment to the work of the first congress.

Mr. Hicks. To the League of American Writers?

Mr. Tavenner. And to the League of American Writers.

Mr. Hicks. I belonged to that until the winter of 1939-40, when I became convinced that the Communist domination was hopeless, and I got out. I might say parenthetically that there were a good many of us who had hoped, having broken with the party, or never having belonged to it——

Mr. Tavenner. Would you raise your voice?

Mr. Hicks. Yes. There were a good many of us who hoped during the fall and winter of 1939-40 that the league could be taken away from the Communists, but it proved to be impossible, and so most of us simply quit.

Mr. Tavenner. Were you of the opinion that it was under the control and domination of the Communist Party from its inception?

Mr. Hicks. Very much so. That does not mean, of course, that all of the members of the league were Communists. Far from it.

Mr. Tavenner. Certainly.

Mr. Hicks. But the Communists were controlling it from the very beginning.

Mr. Tavenner. How long did you remain a member of this first group in the city of New York, that is, the group of the Communist Party to which you were assigned?

Mr. Hicks. Only until the following summer—the summer of 1935—when I asked to be transferred to the Street branch in Troy, where I was then living. This was partly because I thought it was foolish to belong to a branch in whose activities I could not really take any effective part. It was also because having been fired from Rensselaer Polytechnic Institute I felt I could afford to be a public and

open member of the Communist Party, and I very much preferred to be in the open. So that I was transferred to the Troy branch, and from that time on went under my own name in the party and made no effort whatever to conceal my affiliation with the party, and spoke many times under direct party auspices.

Mr. Tavenner. When you first became a member in the city of New York in the group to which you were introduced by Professor Stern, your membership was kept secret?

Mr. Hicks. Yes.

Mr. Tavenner. Did you use your own name?

[fol. 341] Mr. Hicks. No. I certainly had a party name. I had no idea what it was, but I was given a party name, I am sure.

Mr. Tavenner. Did you pay dues?

Mr. Hicks. Yes.

Mr. Tavenner. What were the dues?

Mr. Hicks. I don't know. The dues system changed several times during the period that I was in the party, and sometimes it was on a sliding-scale basis, and sometimes it was on a direct percentage basis. I think that the dues ran somewhere around 5 percent and up. Perhaps higher than 5 percent of one's income.

Mr. Tavenner. Five percent of your income?

Mr. Hicks. Yes.

Mr. Tavenner. Now you stated that you were teaching at Rensselaer College at the time you were editor of the New Masses. How long were you or did you occupy that dual relationship?

Mr. Hicks. A year and a half.

Mr. Tavenner. How long was it after you became a member of the Communist Party that your services were dispensed with at Rensselaer College?

Mr. Hicks. Five or six months.

Mr. Tavenner. Had you become openly known as a member of the Communist Party at that time?

Mr. Hicks. No, I had not. I was certainly known as a very close sympathizer, as my being on the New Masses and presiding on the [American] Writers Congress, and so

on, would indicate; but I concealed the fact that I was actually a member of the Communist Party.

Mr. Tavenner. Was there any connection between your release as a teacher at Rensselaer College and your Communist Party affiliations?

Mr. Hicks. The administration refused to give that as the reason for dismissing me. Presumably I was officially dismissed for reasons of economy. However, in his commencement address the acting president said that he did not fire me because I was a Communist, but if he had fired me because I was a Communist it would have been all right. You may draw whatever inference from that you wish.

Mr. Tavenner. Did you at the time make any claim or assertion as to the cause of your release in a public way?

Mr. Hicks. Oh, I said as loudly as I could that I was being fired because I was a Communist sympathizer.

Mr. Tavenner. Did you at that time admit publicly that you were actually a member of the party?

Mr. Hicks. I did not.

Mr. Tavenner. Was it immediately after your release from Rensselaer College that you asked to be transferred to Troy?

Mr. Hicks. It was.

Mr. Tavenner. Do you mean in being transferred to Troy, being transferred to a Communist Party unit in Troy?

Mr. Hicks. That is what I mean. Yes.

Mr. Tavenner. Was that suggestion made to you by Communist sources, or was it a matter of your own decision?

Mr. Hicks. It was a matter of my own decision, which was to some extent resisted by the Communists in New York, but at the end they agreed, and that was what happened.

[fol. 342] Mr. Tavenner. At the time your connections were severed from Rensselaer College, did the Communists of your group take any position with regard to your making it known publicly that you were a member of the Communist Party?

Mr. Hicks. Bernhard Stern suggested that he thought it

was very unwise. I remember that. Whether any of the others made similar suggestions I don't know, but in any case, whatever was said, I did what I wanted to do and became a public member.

Mr. Tavenner. But you did not become a public member until you had left the group in New York?

Mr. Hicks. No.

Mr. Tavenner. Why was it you did not announce publicly that you were a member of the Communist Party while still a member of the group in New York, instead of waiting until you got to Troy and until you were assigned to the Troy group?

Mr. Hicks. Because that would have been—there would have been a danger then of exposing members of the unit in New York.

Mr. Tavenner. Wouldn't there have been an equivalent danger of exposing people in Troy?

Mr. Hicks. Not really an equivalent danger. And actually it wouldn't have been so serious if they had been exposed.

Mr. Tavenner. Why is that?

Mr. Hicks. Well, the Troy branch—it was known a Troy branch did exist. It carried on various regulations, political and public activities. It was taken for granted that it was there; that a public spokesman should appear for it really didn't change the actual situation at all. The group in New York, on the other hand, was a highly secret group, and nobody was supposed to know it. Nobody outside the party was supposed to know that there was even such a group in existence. Therefore, to have called attention to it might have been to point the finger at the particular individuals who made it up.

Mr. Tavenner. Was this group in New York a group of persons in sensitive positions in their particular fields?

Mr. Hicks. Not particularly.

Mr. Tavenner. Or prominent positions?

Mr. Hicks. Fairly prominent in some instances.

Mr. Tavenner. Was John Howard Lawson a member of that group?

Mr. Hicks. That question I could only answer in terms of hearsay.

Mr. Tavenner. Do you know?

Mr. Hicks. I do not ever remember seeing him at a meeting of that group.

Mr. Tavenner. Were any other members of the staff of New Masses members of that group?

Mr. Hicks. No.

Mr. Tavenner. Can you recall the name at this time of any other persons who were members of that particular group?

Mr. Hicks. I can. Do you think it is relevant to the interests of the committee at the present time?

Mr. Tavenner. It isn't relevant to the issue we are immediately concerned with.

Mr. Hicks. I have already given those names in private hearing and I would be glad to let that matter rest there for the time being.

Mr. Tavenner. Mr. Chairman, in the light of the fact it [fol. 343] is not a matter concerned with our present hearing I am not disposed to press the answer.

Mr. Kearney. All right.

Mr. Tavenner. When you were assigned to the unit in Troy did you immediately make known publicly your membership in the Communist Party?

Mr. Hicks. Not at any rate in the sense of sending a statement to the local papers saying I have joined the Communist Party, but almost immediately I began speaking at open party meetings and broadcasting for the party on the radio.

Mr. Tavenner. How long did you continue as an open party member?

Mr. Hicks. I was an open party member as long as I was in the party.

Mr. Tavenner. Can you give us the approximate date of your transfer to the Communist Party at Troy?

Mr. Hicks. Only that it was sometime in the summer of 1935.

Mr. Tavenner. Your next employment, I believe, was at Harvard University?

Mr. Hicks. Yes.

Mr. Tavenner. What was the position to which you were elected, or which you were given in Harvard?

Mr. Hicks. I think the title was counselor in American civilization.

Mr. Tavenner. Was that a new system or plan of study which had been inaugurated that year?

Mr. Hicks. It was a new plan. As I recall, someone had given Harvard a sum of money to undertake an experiment of this kind for a period—a limited period of years—to see if it would be successful for, say, 3 or 4 years. The plan was that a man should be appointed to each of the houses at Harvard, that is, these groups which had living quarters and eating places, and also integrated in the study program. A man should be assigned to each of these houses whose job it would be to try to interest the students in that particular house in studying American culture outside of actual classroom work.

Mr. Tavenner. What phase of American culture was it contemplated they should be taught?

Mr. Hicks. Well, most of the people who were appointed were either in American literature, or American history, or both. So that I take it the emphasis fell on American history and literature.

Mr. Tavenner. Which was your field?

Mr. Hicks. American literature.

Mr. Tavenner. How many counselors were appointed?

Mr. Hicks. Seven or eight, I think.

Mr. Tavenner. Were you employed by the faculty or by some other group or organization of the university?

Mr. Hicks. Well, I suppose I was employed by the corporation which is the governing body of Harvard University.

Mr. Tavenner. Will you tell the committee the circumstances under which you were employed? Who initiated the movement or the suggestion of your employment?

Mr. Hicks. Well, I was—as I recall it, the first suggestion came from a friend of mine at Harvard—F. O. Matthiessen, the literary critic, who wrote to ask whether I would be interested in such an appointment if it were offered me. He had reason to ask that since it was only a part-time job [fol. 344] with part-time pay, and I would in any case have to go on with free-lance writing, and so on, in order to support my family.

He therefore approached the subject rather tentatively, telling what the plan involved and asking me if I would be interested, and saying, of course, that he could promise nothing; this was simply a tentative inquiry.

After thinking it over I wrote back that I thought I would be very much interested, and in due season received an official appointment—from whom I don't know.

Mr. Tavenner. Do you have any records showing how the official appointment was made?

Mr. Hicks. I may have. I usually keep such things. But I think it would have come in the form of an impersonal letter from whatever official of the university handled that kind of thing.

(Representative Donald L. Jackson left the hearing room at this point.)

Mr. Tavenner. Do you know whether or not your activity in the Communist Party, or even the fact of the Communist Party membership at that time, was known to the appointive powers at Harvard?

Mr. Hicks. It seems as if it must have been, but I don't know absolutely that it was.

Mr. Tavenner. When did you first enter the school for the performance of your duties?

Mr. Hicks. In September 1938.

Mr. Tavenner. When did you receive your appointment?

Mr. Hicks. The preceding April or May.

Mr. Tavenner. I have seen an article in the New York Times date-lined April 12 stating that you were appointed that day and there was a considerable question raised at that time, was there not, about the appointment by Harvard of a person in your capacity who was a known member of the Communist Party, was there not?

Mr. Hicks. Particularly in the Boston newspapers.

Mr. Clardy. In the what?

Mr. Hicks. In the Boston newspapers.

Mr. Tavenner. Did your Communist Party membership have anything to do with your not being retained for an additional year, to your knowledge?

Mr. Hicks. That is a matter that was very much under dispute. I maintained at the time that it did. The adminis-

tration said that it never intended to appoint counselors for more than a year at a time. Whether what they said was true, none of the counselors had been aware of it. We thought there was a possibility of renewal, but I am not questioning what they said at that time at this time. At the time I thought that it was because of the embarrassment that had been caused them that they let me go.

Mr. Walter. Who passed on the question? The president of the university?

Mr. Hicks. I beg your pardon, sir?

Mr. Walter. Who passed on that question? The president of the university?

Mr. Hicks. On the question of appointing me in the first place, or letting me go? I suppose that I could have been [fol. 345] appointed without the president's having any immediate knowledge of it. That is, this was a very unimportant position and it is the kind of thing that could quite conceivably have slipped by without his investigating the subject very carefully. I have never known whether that was true or not. I think he was very well aware of what went on when I left.

Mr. Tavenner. Well, during the period of your work at Harvard for the year that you were there, did you continue in your Communist Party associations?

Mr. Hicks. Oh, yes.

Mr. Tavenner. And membership?

Mr. Hicks. Yes, indeed.

Mr. Tavenner. Were you very serious at that time about the subject of communism?

Mr. Hicks. I should say so, yes, very serious, indeed.

Mr. Tavenner. Did you have your membership transferred from Troy to Harvard University?

Mr. Hicks. I suppose I must have. I don't remember the circumstances, but I—I was associated with the Harvard branch as soon as I got there.

Mr. Tavenner. Did you find that branch in existence when you came?

Mr. Hicks. I did.

Mr. Tavenner. Was it there when you left?

Mr. Hicks. It was.

Mr. Tavenner. Was that known as the Harvard branch?

Mr. Hicks. I don't know whether it was. I don't suppose it could have been. Ever—we always spoke of it as such, but I imagine that officially it had some other name.

Mr. Tavenner. Were you aware that the existence of a cell of the Communist Party at Harvard among the professors was known generally in the community?

Mr. Hicks. I think it was known generally, yes.

Mr. Tavenner. Was the membership of the group known?

Mr. Hicks. Not known certainly, no.

In some cases I think there were strong suspicions; in others probably not.

Mr. Tavenner. Was your own position in the membership of the Communist Party known to the students generally?

Mr. Hicks. Yes, indeed.

Mr. Tavenner. You had not endeavored to conceal your Communist Party membership after having once become an open member?

Mr. Hicks. No.

Mr. Tavenner. While a member of the Troy branch of the Communist Party?

Mr. Hicks. That is true.

Mr. Tavenner. We just had on the witness stand a professor from Harvard University, Dr. Wendell Furry. Did you become acquainted with him while at Harvard?

Mr. Hicks. Yes, I did.

Mr. Tavenner. Was he a member of the Communist Party cell or group of which you were a member?

Mr. Hicks. Yes, he was.

Mr. Tavenner. Was he a member when you came there?

Mr. Hicks. Yes.

[fol. 346] Mr. Tavenner. Was he a member when you left?

Mr. Hicks. Yes.

Mr. Tavenner. Do you know anything about his continued membership in the Communist Party after you left?

Mr. Hicks. No, I have no knowledge of that kind.

Mr. Tavenner. Have you any knowledge of the continuance of that Communist Party cell in later years?

Mr. Hicks. No, I have not.

Mr. Tavenner. Have you had any occasion to know one way or another about its existence or nonexistence?

Mr. Hicks. No, the only person who was in any position to tell me about that was Robert Davis, who testified yesterday. After he, too, had left the party, I had no contact with it whatever.

Mr. Tavenner. Did you become acquainted with a person by the name of Israel Halperin?

Mr. Hicks. I did.

Mr. Tavenner. Was he a member of that cell of the Communist Party?

Mr. Hicks. He was.

Mr. Tavenner. At Harvard: Do you recall what his connection with the institution was?

Mr. Hicks. No, I don't. I think he was probably a part-time teacher and part-time graduate student, but I'm not sure.

Mr. Tavenner. Do you recall Dr. Daniel J. Boorstin?

Mr. Hicks. Yes.

Mr. Tavenner. Was he a member of the group or cell of the party of which you were a member?

Mr. Hicks. He was.

Mr. Tavenner. Do you recall a person by the name of Richard Schlatter—S-c-h-l-a-t-t-e-r?

Mr. Hicks. Yes, I do.

Mr. Tavenner. Was he a member of your group?

Mr. Hicks. Yes.

Mr. Tavenner. Of the Communist Party?

Mr. Hicks. He was.

Mr. Tavenner. Do you have knowledge of his withdrawal from the Communist Party at a later date; that is, of your own personal knowledge?

Mr. Hicks. No, not of my own personal knowledge.

Mr. Tavenner. Mr. Chairman, this the same person mentioned previously as having withdrawn from the Communist Party in about 1939.

Mr. Walter. As I understand it, since that time, Doctor, you have been engaged quite actively in anti-Communist work, including the writing of anti-Communist books.

Mr. Hicks. Yes; yes, sir.

Mr. Tavenner. Were you acquainted with a person by the name of Jack Rackliffe—R-a-c-k-l-i-f-f-e?

Mr. Hicks. Yes.

Mr. Tavenner. What was his connection with Harvard University?

Mr. Hicks. I don't really know.

Mr. Tavenner. Was he a member of the teaching staff?

Mr. Hicks. I don't know. He—most of these people were very low in the academic ladder, and many of them were [fol. 347] doing graduate work at the same time they were teaching, and looking back now these 14 years, I just don't recall the details in most of the instances.

Mr. Tavenner. Was he a member of the party?

Mr. Hicks. Yes.

Mr. Tavenner. Of the Communist Party with you?

Mr. Hicks. Yes, he was.

Mr. Tavenner. Do you recall George Mayberry?

Mr. Hicks. Yes.

Mr. Tavenner. Was he a member of the Communist Party with you?

Mr. Hicks. Yes, he was.

Mr. Tavenner. Do you recall at this time any special activity of Dr. Wendell Furry in that Communist Party group while you were there?

Mr. Hicks. No, no; I just remember him as one of the members doing what other people were doing.

Mr. Tavenner. What was the chief concern and activity of that group of the Communist Party during the year you were there?

Mr. Hicks. Well, I think Mr. Davis stated it very well yesterday.

Mr. Tavenner. Well, rather than to repeat matters that he testified to in particular, do you have any facts to add in addition to what he said?

Mr. Hicks. No, I think not. I think his account was adequate and accurate.

Mr. Tavenner. Is there anything that he said about the activity of the Communist Party with which you disagreed?

Mr. Hicks. Not that I can recall.

Mr. Tavenner. Did you personally take part in caucuses of the Teachers' Union?

Mr. Hicks. In the sense that almost every meeting of the party unit was a caucus, as I think has already been pointed out. That is, we did not hold separate caucuses because there

was no need of it; we discussed Teachers' Union affairs at meeting of the party branch.

Mr. Tavenner. Do you recall an individual by name of Louis Harap—H-a-r-a-p?

Mr. Hicks. Yes.

Mr. Tavenner. What connection, if any, did he have with this Communist Party group?

Mr. Hicks. He was a member of the group.

Mr. Tavenner. Will you tell how the directives or instructions from the Communist Party were transmitted to your group?

Mr. Hicks. My recollection is that they came in various ways. As a matter fact, I have often carried them myself, since I had—I was carrying on a rather wide range of Communist propaganda activities, and therefore, was likely to go into Phil Frankfeld's office, and he would tell me things he wished our group would discuss or would do.

I think Harap also acted as a kind of go-between, and there may have been others. It was pretty informal in that particular year.

Mr. Tavenner. Were all the members of this group fairly active in the work of the party?

Mr. Hicks. I would say there was a good deal of variation. Some were much more active than others.

[fol. 348] Mr. Tavenner. You referred to the wide range of Communist Party activities that you were engaged in at that time. Will you explain that, please?

Mr. Hicks. Well, most of it was simply speaking at various meetings of many kinds. The fact that so much publicity had been given my appointment at Harvard led to many invitations from highly respectable organizations as well as party organizations, and during that entire year I think I spoke on an average of 2 or 3 times a week.

Mr. Tavenner. Were those speeches made with the purpose of advancing the cause of communism generally?

Mr. Hicks. Generally, yes.

These speeches, or especially those that were given to our large non-Communist groups, were devoted chiefly to expounding the anti-Fascist position which was at the time the official position of the party and was very much my own position.

Mr. Tavenner. Did you have occasion in carrying out that function to speak before groups of students of the college?

Mr. Hicks. Yes, at Harvard and other colleges as well.

Mr. Tavenner. What type of groups did you speak before at Harvard—or let me change the question: Was there a Young Communist League organization at Harvard at that time?

Mr. Hicks. I believe there was.

Mr. Tavenner. Did you appear as a speaker before it?

Mr. Hicks. Not that I can recall.

Mr. Tavenner. Did you attend one of their meetings at any time?

Mr. Hicks. Not that I can recall.

Mr. Tavenner. Do you know to what extent higher functionaries of the party visited that Young Communist League organization among the students at Harvard?

Mr. Hicks. Well, I have no idea.

Mr. Tavenner. Did you discuss that with Phil Frankfeld on any occasion?

Mr. Hicks. Not that I can recall. I think the feeling was, my being an open Communist, I had better not have much to do with the YCL, at least that's the way I can recall now. Certainly I didn't have much to do with it.

Mr. Tavenner. Now, what was the general purpose of the Communist Party in endeavoring to organize a cell or unit among the teaching profession at Harvard, or at any other university, as far as that is concerned?

Mr. Hicks. Well, I think that's a question that has to be answered on two levels, really: First, what I thought then, and second, what I think now.

May I answer it that way?

Mr. Tavenner. Yes, sir.

Mr. Hicks. What I thought then was that the Communist Party, having had a genuine change of heart in 1934 and 1935, when the new line was adopted, was interested in carrying on the fight against fascism and in protecting democracy against fascism and had postponed into some rather indefinite future the whole idea of world revolution.

I believe that in the light of that the Communist Party was interested in reaching all people who can mold public opinion, and among these, of course, would be the teachers.

[fol. 349] Mr. Tavenner. And, incidentally, at that point, wouldn't the teachers be in a better position to mold public opinion among people generally both within and without the schools than almost any other class of people?

Mr. Hicks. They certainly were a very influential group, and the party was well aware of that.

Mr. Tavenner. Pardon my interruption.

Mr. Hicks. Yes, certainly. Of course, I feel now that the party was—well, it is very obvious to me that the popular front was simply a dodge that happened in those particular years to serve the foreign policy of the Soviet Union; so it seems to me that the party, in organizing branches in the colleges, had two purposes. One was to carry out the existing line which they wanted to make a show of advancing, and then, of course, the other was to try to have a corps of disciplined revolutionaries whom they could use for other purposes when the time came.

Mr. Walter. Did you ever come in contact with the corps of trained revolutionaries?

Mr. Hicks. In the sense that the party organizers, like Phil Frankfeld, for example, are.

Mr. Walter. I think he would faint if anybody showed him a gun, and I am sure that is true of a great many of the revolutionaries that testified before this committee. I am just wondering, in view of these rather jacketed, hard-boiled revolutionaries, who they were.

Mr. Hicks. They were the party functionaries as a rule, the professional party members, the members who give the whole of their lives to it.

Mr. Kearney. In that category would you designate the group of Communists who were convicted in New York City?

Mr. Hicks. Certainly.

Mr. Tavenner. Now, will you elaborate further upon those two methods or purposes, rather, of the Communist Party, as you understand it now?

Mr. Hicks. Well, I think the only way I can elaborate is to say that most, and perhaps all, of the men who belonged to the unit at Harvard were people who felt as I did, who were thinking of party activity in terms of the situation that then existed in the late thirties, a situation in which, to many

people in this country, the great enemy was certainly Fascist Germany, and our potential ally was Soviet Russia.

I think that these people, almost without exception, felt that.

Mr. Tavenner. Now, that was the situation as you have described it prior to, I assume you mean, the pact between the Soviet Russia and Germany, which was August 23, 1939.

Mr. Hicks. Exactly.

Mr. Tavenner. What change occurred at that time?

Mr. Hicks. Well, after a very brief period of confusion, the party, of course, adopted its position. The fight against fascism was a secondary matter, a matter of taste, as Molotov said, and that the war as now going on was an imperialist war and that the chief aim of all Communists should be to prevent the United States from aiding England and France in their fight against Nazi Germany.

Mr. Tavenner. Did you have any difficulty in accepting that sudden change in Communist Party line?

[fol. 350] Mr. Hicks. I found it perfectly impossible to accept it and got out of the party within a very short time after the pact was signed.

Mr. Tavenner. Were you concerned about it to the extent that you sought further information or advice from functionaries on a higher level?

Mr. Hicks. Yes; I went to New York, had a talk with Earl Browder, to see if he had anything to say; I mean, I didn't want to break with the party. I had given 4 years of my life to it. I didn't want to break. It was a very hard step to take. I was convinced I had to take it, but I went to talk with Browder and to see if he had anything to say that I hadn't already read in the Daily Worker.

He simply paralleled the Daily Worker line, and I came home and wrote a public letter of resignation.

Mr. Tavenner. What he had said confirmed your opinions and judgment about the change in the party policy, in the party line?

Mr. Hicks. It made perfectly clear to me what should have been clear to me earlier, and that is that the Communist Party in the United States was wholly under the domination of the Soviet Union.

Mr. Doyle. What year was that?

Mr. Hicks. That was September 1939, or August and September.

Mr. Scherer. You believe that to be true today, too?

Mr. Hicks. I do.

Mr. Scherer. Do you know whether that's true or not today?

Mr. Hicks. How do you know? I think the evidence is overwhelming.

Mr. Scherer. I just want that as a part of the record.

Mr. Kearney. May I suggest that the gentlemen of the committee let counsel pursue the examination and then if the members have any questions to ask, they can ask them at the end of counsel's interrogation. It will expedite matters.

Mr. Tavenner. Well, now, at the time you left the party for the reasons that you mentioned, there were others who had entered it with the same beliefs you had, but continued to remain in the Communist Party; isn't that true?

Mr. Hicks. I think that is true.

Mr. Tavenner. It took some courage and determination to break bonds after once being entered into; did it not?

Mr. Hicks. I think so. It was a difficult thing to do, as I said a moment ago. There were people who were in positions which perhaps made it even more difficult; that is, where the party itself might be able to exert pressure.

In my own case it was very fortunate that I had been an open member of the party, because I had to make my decision openly. I had been saying all this about fascism being the real enemy, and now I would have to turn right around and say the exact opposite, and of course I couldn't bring myself to do that, and there was nothing to do but break with the party. If I had been a secret member, I could have temporized for some months, worried and fretted, and then eventually come around and reconciled myself to the new party line.

Mr. Tavenner. Well, I would like for you to give the committee the benefit of such opinion as you have, based upon your knowledge of the Communist Party and its principles, and particularly its purposes, as you have described them at this time.

[fol. 351] Mr. Hicks. Well, I feel, as I said a moment ago, that the evidence is overwhelming; that the Communist Party in this country is and always has been dominated by the Soviet Union. I think that every member of the Communist Party is an actual or a potential agent of the Soviet Union.

I would like to stress that word "potential."

Any given individual at any given moment may not be an agent, even though he is a member of the Communist Party; that is, when a test comes, that would make him an agent, in effect, of the Soviet Union. He may break with the party, as I believe many people have done. That happens not only in moments when the party line changes. I think that has happened to individuals who were given assignments that they suddenly saw were in effect treasonous, and they would not carry such assignments out, and they quit then and there. So, as I say, you cannot at any moment, at any given moment, say a particular member of the Communist Party is an agent of the Soviet Union, but I think you can say he is potentially an agent, and that that is exactly how the Communist Party would like to use him if it could.

Mr. Tavenner. But do you not agree that these potential agents have nevertheless a very important part to play in the development of the whole Communist scheme of things in the promulgation of the Communist Party line, among people generally, and the influencing of the public and the public's views, upon contributions to Communist-front organizations, in which the Communist Party is interested and is using?

Mr. Hicks. Oh, I do agree, that's absolutely true. I just did not want my statement about a party member being a Soviet agent to stand unqualified. That would be unfair.

Mr. Tavenner. Yes, I agree.

Mr. Hicks. To certain individuals.

Mr. Tavenner. Now, knowing students at college, as you are bound to know them, and understanding the motives of the Communist Party, what is your judgment about the advisability of maintaining in a responsible position in a college a teacher who is under the directives and under the discipline of the Communist Party as you have described it?

Mr. Hicks. Well, I think there are—in most situations that is probably a very undesirable thing. I must say I would go along with Senator Taft in feeling that I would not want to make an absolute rule about that. I think there are situations in which it would be better to let a Communist keep his job than to disrupt the whole fabric of academic freedom; that is, I won't make an absolute statement to the effect that every Communist in an educational institution ought to be removed as quickly as possible.

I think each case ought to be looked into on its merits, and the question of the damage, the kind and amount of damage the particular individual is doing should be determined, and all that should be taken into account.

Mr. Walter. Don't you distinguish unorthodox teachings from teachings advocating the overthrow of the Government?

Mr. Hicks. Well, there is no—I'm assuming there is no evidence that this particular hypothetical Communist has [fol. 352] been teaching the overthrowing of the Government. If he has, then that's another matter.

Mr. Kearney. Counsel, proceed, and I am going to ask the members again to wait until he has finished, and then examine the witness.

Mr. Tavenner. Do you not agree that it is potentially dangerous to permit a member of the Communist Party, who is subject to its discipline to be in a situation in a college where both in matters relating to the curriculum and his duties as a teacher and also his extracurricular activities he is in a position to influence students or other faculty members, for that matter, and likewise to become potential agents of the Soviet Union by becoming Communist Party members?

Mr. Hicks. I think it's a danger, but I'm not sure it's a very serious or grave danger.

After all, in the thirties, when the whole intellectual atmosphere was favorable to communism, there were only perhaps 10 or 12 Communists out of the faculty of hundreds at Harvard University, and these men in almost every instance have the lowest academic rank.

Now, if that is the best that communism can do in our colleges, perhaps we've been a little too worried about

them. Perhaps it is not quite so serious a thing as we have been supposing.

Mr. Tavenner. Well, can you state that it is not a serious thing if even one student at college is induced to embark upon an enterprise which may later, in later life, bring him into a situation comparable to some of those who have been prosecuted for their Communist activities?

Mr. Hicks. Of course it's serious. I think it's terribly serious. The only question is, what are you going to do to prevent it?

Now, you cannot protect all college students 100 percent. Some of them take to drink, and some of them take to communism, and lots of other things happen to them, and there's nothing that anybody on God's earth can do that will look out for all college students. I think you have to just say that is a risk you run.

Mr. Tavenner. In other words, you are considering it, on a very small scale, as being a calculated risk?

Mr. Hicks. Yes.

Mr. Tavenner. But would you say it should be put in a category of a calculated risk where the Communist Party teacher is a member of an organized group of the Communist Party and is functioning with others as a group?

Mr. Hicks. I think that—well, let me start over again. There again it is certainly a danger, and if there is a functioning group, a large functioning group, it can be a very serious danger against which rather drastic action may have to be taken.

On the other hand, I think we should be rather careful not to exaggerate that danger, especially in a period such as this, when most people are overwhelmingly aware of the evils of communism.

In this situation, it seems to me, it would be very hard for the most devoted Communist teacher to make very many converts.

Can I say one thing more about that? I think another thing we tend to do in our discussion of this problem is to exaggerate the persuasiveness of the Communist teacher, forgetting that for one Communist on the faculty there are a hundred to a thousand other teachers, who, if they are

[fol. 353] as dispersuasive as he is persuasive, certainly ought to be, since they have so much better a case.

Mr. Tavenner. But it has been demonstrated time and time again in evidence before this committee that just a small handful of Communist Party infiltration cell got control of that entire group, and would take multitudes to accomplish, and I have in mind particularly the testimony of [Matt] Cvetic, when he related what hapened in a labor union of 2,800 persons who were loyal Americans, and how this Communist Party infiltration cell got control of that entire group, and there were never more than 20 people in that group.

Mr. Hicks. Well, I have seen that sort of thing happen, and I don't want to discount it. On the other hand, it is easier to take over a trade union than it is to take over a university, a good deal easier.

Mr. Tavenner. Were there any efforts of reprisal made against you for breaking from the party?

Mr. Hicks. Not that I know of, not that I was conscious of.

Mr. Tavenner. During the period of your membership were any efforts made to direct you in the character of writing you performed, that you did?

Mr. Hicks. There were efforts made, but when I resisted them, I had no trouble.

Mr. Tavenner. What was the nature of the effort that was made?

Mr. Hicks. To make them conform more closely to what was then the party line. I mean, I was following the party line, you understand, and I though I had as much right to my interpretation of it as the other people did, and—but they, in a few instances, I can recall, suggested that I should change this, or do that, but when I said "No," that was the end of it. I was in a rather fortunate position.

Mr. Tavenner. Can you give us an illustration of instances, specific instances, where an effort was made to direct your writing?

Mr. Hicks. The one that comes to mind because I have often quoted it as a joke came when I did a review of the Book of Selections on Marxism for the Communist, the official theoretical magazine of the party. In the course

of the review I remarked on the fact that Marx and Lenin were very vivid writers as well as being great theoreticians, and so on.

I received a telegram from V. J. Jerome asking what about Uncle Joe, meaning I had left out Stalin, and praise of Stalin was becoming obligatory in the Communist, as well as the papers in Russia. Since I happened to think one of the greatest—one of the real evils that Stalin has brought is the corruption of the style of the Communist word, I wrote back, wired back, "nothing doing," and the review went as I had written it.

That is a very trivial incident.

Mr. Tavenner. What has been the general nature of your opposition to the Communist Party since severing your connection with it——

Mr. Hicks. Well, I——

Mr. Tavenner. In 1939?

Mr. Hicks. I have written very extensively in magazines, from the very beginning. I have written in the Nation, in the New Republic, Harpers, Commentary, and Partisan Review. I am on the editorial board of the New Leader, which is a leading anti-Communist paper.

I have also done a good deal of lecturing on the subject [fol. 354] here and there. I've introduced the theme of anticommunism in several of the books I have written in this period. I've been active—not very active because of my remoteness from New York, but I have taken part in the work of the Americans for Democratic Action and the American Committee for Intellectual Freedom.

I think that is a rough summary.

Mr. Tavenner. I believe that is all, Mr. Chairman.

Mr. Kearney. Any questions?

Mr. Clardy. Just one: He mentioned the Americans for Democratic Action, which arouses my interest.

Where did you slash that from the line of fronts?

Mr. Hicks. Well, I think that is and always has been a leading anti-Communist group of left, liberal intellectuals. It was formed, after all, in the very beginning as an organization in which people of liberal and progressive ideas—to which they could belong and fight communism at the same time they were fighting for the particular causes that

they had in mind. It was—it was very scrupulous from the very beginning to keep all Communists out of it.

Mr. Clardy. But it followed a party line, almost identical in many particulars with the Communist Party line, was it not?

Mr. Hicks. That I think is mistaken—I think you will find ADA had disagreed with the Communist Party line again and again and again.

Mr. Clardy. I would offer to show you my diagram.

Mr. Kearney. Mr. Walter.

Mr. Walter. Well, as a matter of fact, the Communist is not eligible for membership in the ADA?

Mr. Hicks. Exactly.

Mr. Walter. Now, you said a moment ago we perhaps were too worried about the menace—that is, the menace of communism—and exaggerated the situation. If that is true, don't you feel that an atmosphere of fear is created throughout the United States which is not healthy.

Mr. Hicks. I think that's absolutely true. The question is: How was it created?

Mr. Walter. How is it created?

Mr. Hicks. How was it created; yes.

Mr. Walter. Now, I don't think there is any question about how it was created, but how can we make the American people understand that the might and majesty of this great republic will not be abused so that innocent, frustrated idealists, if you please, are not destroyed at a time when congressional committees are conducting a legitimate duty?

Mr. Hicks. I'm afraid I don't understand where that question gets to. I—I think the fear in this country is in part a very real and understandable fear of the Soviet Union and its agents. It is a fear that we should all share. It is a perfectly real thing.

Over and above that, I think there is a mood of rather vague apprehension that is not rational and that is dangerous, and I do feel that that mood of irrational apprehension has been encouraged in part by congressional—I will say legislative investigating committees.

Mr. Walter. Well, what can be done to make the people realize that this committee, at least—I don't know about

the others, but I assume they have a similar desire—are in search of knowledge for perfectly legitimate reasons. [fol. 355] Now, I am inclined to agree with you that we are exaggerating the situation now, particularly in the light of recent events—Korea, and then the anti-Semitic movement, which is widespread in Russia. I am sure that the Communist Party membership has been reduced considerably—certainly the eggheads have all gotten out of it—and I just can't imagine intellectuals believing that in the Communist movement in the United States there is anything that even resembles the solution for our economic problems. I think that's true.

Mr. Hicks. Oh, I agree.

Mr. Walter. All right. Now, then, if that is the fact, what can this committee do to make the American people believe, outside of the mistakes that are made, understand, that we are not determined to search into men's minds for ideas, but that we want to know what the extent of this menace is?

Now, you say it is exaggerated. You say we are too worried, and I think it is our job to find out if that is the fact.

Mr. Hicks. Well, for some reason, the emphasis in all these investigating committees always falls on the fact of how much communism there is and never on how little there is.

Mr. Walter. That's right.

Mr. Hicks. It seems to me I have been sitting around here for 2 days in which it has been demonstrated that there were 10 or 12 Communists at Harvard 14 years ago and that perhaps there is one still there.

Now, I would honestly think if you could just say to the public, "Look, that's all," instead of saying, "Look how much that is; isn't that terrible?" you might do a good deal to allay the fear that is sweeping over this country.

Mr. Kearney. That statement I thoroughly agree with.

Mr. Clardy. Maybe we will on this before we get through. We have only started.

Mr. Kearney. Mr. Doyle.

Mr. Doyle. I made a note, as you testified, and you briefly said this: That you had concluded that they have postponed their idea of world revolution.

That is one point you made, and then another point: You said, "I feel now that front was merely a dodge, but they had determined to have a corps of trained revolutionaries."

Do you remember using substantially——

Mr. Hicks. Yes.

Mr. Doyle. Such language?

Mr. Hicks. Yes; I do.

Mr. Doyle. When you say "revolutionaries" in that connection, was it your experience, as an active member, public member, of the Communist Party that the Communist Party in America was advocating then the use of force and violence, even indefinitely, some time in the future, that that might be necessary?

Mr. Hicks. The Communist Party at that time certainly was not advocating the use of force and violence. I think that always in the background there was that possibility as part of the whole Marxist concept. It was being soft-pedaled, however, in the period 1935 to 1939. It was, I think, never mentioned in the general—in general publications of the Communist Party.

[fol. 356] I would like to say one more thing about that: That even speaking about trained revolutionaries does not go far enough today. When we speak of trained revolutionaries, we're thinking—at least I'm thinking—of the sort of thing that Lenin recommended when he was building up the Bolshevik Party in Russia. What we have today, what the party is looking for today, it seems to me, is simply not even trained revolutionaries, but dependable agents.

Mr. Clardy. The what?

Mr. Hicks. Dependable agents—agents of the Soviet Union.

Mr. Clardy. Agents of what?

Mr. Hicks. Agents. They are looking for dependable agents of the Soviet Union.

Mr. Doyle. Well, may I state this to you briefly—the ground work for my last question so you will understand the purport of the question more clearly: I was in Japan and Korea, Kwangtung, Formosa, Okinawa, Hong Kong, a couple months ago for Congress and while I was in Korea those few days, and in Japan, and elsewhere, I asked our

American Intelligence, also some other intelligence, whether or not, in their judgment, the military aggression in Korea, in Indochina, Indonesia, was part or had any definite relationship to the subversive Communist Party program in the United States of America. And a hundred percent of those men all said, "Yes. It's part and parcel of the same international conspiracy."

Now, having made that report to you, I want to ask you whether or not you have any opinion, based upon your knowledge, whether or not trying to get these Communists who, as you say, would be Soviet agents rather than Soviet revolutionaries, whether or not in your judgment the Communist Party program in the United States of America today is the agent of Soviet Russia.

Mr. Hicks. I believe that it is, and there's no question in my mind that it is to be combated. The only question is how do you combat it most effectively and, in the course of doing so, do a minimum of damage to our American institutions.

Mr. Doyle. Well, now, Mr. Chairman, may I ask this final question then: Have you any suggestion or recommendation to make to this committee on the question of legislation?

Mr. Hicks. No; I have not on legislation. The only suggestion I have to make is the one I already made.

Mr. Doyle. Thank you.

Mr. Kearney. Mr. Frazier.

Mr. Frazier. No questions.

Mr. Kearney. Mr. Walter, I interrupted you on a question.

Mr. Walter. Well, I was just leading up to my last question.

At any rate, of those who now remain in the Communist Party, they are, in fact, representatives of the Soviet and agents of the Soviet with their allegiance there first?

Mr. Hicks. I made the distinction earlier——

Mr. Walter. Yes.

Mr. Hicks. That they are either actual or potential agents. I think that now, after all that has happened, the chances are that most of them are actual, not potential, but I still think that you have to allow that much margin of doubt.

Mr. Walter. Well, then, can't this whole thing be dealt with adequately by making it a crime to be a Communist [fol. 357] Party member and just arrest people, prosecute them for membership in the Communist Party, instead of searching all over the lot?

Mr. Hicks. I have sometimes felt that that was certainly the answer and would be much simpler. How much damage that would do, I don't know. I mean, whether that would again give the impression that this big country is too much worried over a little party—it would be a simpler and, in many ways, I think, a more satisfactory way of handling the problem than what we've had in the last 2 or 3 years.

Mr. Kearney. No matter which way it was done, somebody would be bound to be hurt?

Mr. Hicks. Somebody will be hurt. There's no getting around it. I mean, innocent people will be hurt.

Mr. Doyle. May I ask this: Do you say that you are suggesting possibly outlawing the Communist Party?

Mr. Hicks. I am saying I have had times when I felt that was the only possible solution.

Mr. Kearney. That's all Doctor; and, on behalf of the committee, I want to thank you for your contribution you have made here before us today. If counsel has no further questions, you are excused.

Mr. Hicks. Thank you very much.

Mr. Kearney. The committee will take a recess until 10 o'clock tomorrow morning.

The witnesses who have been subpenaed will report in room 226.

(Whereupon, at 4:29 p. m. the hearing was recessed until 10 a. m., Friday, February 27, 1953.)

[fol. 358] GOVERNMENT'S EXHIBIT No. 8

HEARINGS

BEFORE THE

COMMITTEE ON UN-AMERICAN ACTIVITIES
HOUSE OF REPRESENTATIVES

EIGHTY-THIRD CONGRESS
SECOND SESSION

JUNE 28 AND 29, 1954

Printed for the use of the Committee
on Un-American Activities

[fol. 359] COMMUNIST METHODS OF INFILTRATION
(Education—Part 9)

Monday, June 28, 1954

UNITED STATES HOUSE OF REPRESENTATIVES,
COMMITTEE ON UN-AMERICAN ACTIVITIES,
Washington, D. C.

The Committee on Un-American Activities met, pursuant to call, at 10:37 a. m., in the caucus room of the Old House Office Building, Hon. Harold H. Velde (chairman) presiding.

Committee members present: Representatives Harold H. Velde (chairman), Donald L. Jackson, Kit Clardy, Gordon H. Scherer, Francis E. Walter, and James B. Frazier, Jr. (appearance shown in transcript).

Staff members present: Robert L. Kunzig, counsel; Donald T. Appell, investigator; and Riley Smith, acting for the clerk.

Mr. Velde. The committee will be in order.

Let the record show that present are Mr. Jackson of California, Mr. Clardy of Michigan, Mr. Scherer of Ohio, Mr. Walter of Pennsylvania, and myself of Illinois, a quorum of the full committee.

Before commencing this hearing I would like for counsel to explain to the committee the purposes and reasons for this hearing this morning.

Mr. Kunzig. Mr. Chairman, on June 8, 1953, 1 year ago, there appeared before this committee in executive session one Francis Xavier Thomas Crowley, who had been subpenaed after he had been identified as having been a member of the Communist Party at hearings in Michigan.

Mr. Crowley came before the committee and refused to answer any questions concerning either his own participation in any Communist activities or anyone else's participation. He flatly refused to answer any questions. He did not take the fifth amendment or avail himself of that privilege. He just refused to answer.

Subsequent to that time, after a vote of the full committee, Mr. Chairman, the committee recommended to the House of Representatives that Francis X. T. Crowley be cited for contempt of Congress.

On May 11, 1954, House Resolution 541 was adopted and Report No. 1586 concerning Mr. Crowley was presented and printed and adopted.

Mr. Crowley, by vote of 346 to 0, was cited for contempt of Congress and his name was referred to the United States Attorney for the District of Columbia to the end that he may be proceeded against in the manner and form provided by Congress. The case is even now pending in the hands [fol. 360] of the United States District Attorney for the District of Columbia.

Mr. Chairman, Mr. Crowley communicated on his own behalf with the committee and asked leave to come before the committee and tell his entire story. He said that he felt that he had misunderstood, that he had been in error. He said also that he had discussed the matter in detail with his priest and had been advised to come and tell the full and true story.

The committee met and agreed to hear Mr. Crowley and he is here today, not under subpena, but voluntarily returning to the committee to answer the questions put to him by the members of the House Committee on Un-American Activities.

The field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley.

It will deal with activities in Michigan, Boston, and in some small degree, New York.

Without further ado, Mr. Chairman, if I have your permission I will call the witness.

Mr. Velde. All right, proceed.

Mr. Kunzig. I call Francis X. T. Crowley.

Mr. Velde. In the testimony you are about to give before this committee, do you solemnly swear you will tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Crowley. I do.

Mr. Jackson. Mr. Chairman?

Mr. Velde. Mr. Jackson.

Mr. Jackson. While the witness is taking the chair, I have a preliminary matter I would like to go into. This is a parliamentary inquiry as to whether or not in recommending to the full House a citation for contempt, whether or not that might be perhaps out of our jurisdiction, the House having acted upon it.

I don't know. I am simply putting that question as to whether the House exercises jurisdiction now in the matter of whether the committee is enabled to proceed on its own accord in the light of the House action.

Mr. Velde. It is my understanding, of course, that when we have a witness who asks to testify before our committee that we do everything possible to grant that request and the privilege of being given a hearing. So the witness is appearing, as I understand, at his own request to clear matters up that he failed to clear up before this committee in executive session.

I do not think that the fact that the Attorney General or the Justice Department or the full House of Representatives has jurisdiction over him has anything to do with this particular hearing, as I understand it.

Mr. Jackson. I ask this question not in a contentious spirit but simply that I may know that we have the jurisdiction.

Mr. Velde. I believe we do under the rules.

Mr. Clardy. Mr. Chairman, may I suggest that Mr. Jackson was necessarily absent at the time we took this up and as I recall the case we canvassed this pretty thoroughly and I think it was unanimously agreed upon that we should go forward.

[fol. 361] (Representative James B. Frazier, Jr., entered the hearing room at this point.)

Mr. Velde. You are referring to the meetings we held in executive session?

Mr. Clardy. Yes, Mr. Chairman.

Mr. Velde. Yes, and we had a quorum present.

Mr. Scherer. In view of the statement by the gentleman from Michigan, I wish to say that the action of the committee was not unanimous. I voted against the motion for a number of reasons, but it was not because of a lack of desire to hear the testimony.

Mr. Clardy. It was not because you did not want to hear him, that is right.

Mr. Kunzig. The question as to whether the matter can be heard by this committee has been taken up with the Parliamentarian and they are in full accord that the witness can be heard.

Of course, what is done by the district court is completely up to the Attorney General.

Mr. Walter. It may be for them to decide, but I think we should express our views as to what decisions we will take on this matter.

Mr. Clardy. If the witness fully cooperates with the committee, I think we should take that into account and make an appropriate recommendation.

Mr. Velde. Certainly. Any Member of Congress or this committee has a right to express his own personal views regarding the witness to the Attorney General or to anyone else who wants to.

Mr. Velde. The witness may be seated.

Mr. Kunzig. Thank you, Mr. Chairman.

Mr. Kunzig. Would you give your full name, please, sir?

TESTIMONY OF FRANCIS XAVIER THOMAS CROWLEY

Mr. Crowley. Francis Xavier Thomas Crowley.

Mr. Kunzig. What is your present address?

Mr. Crowley. 226 Second Avenue, New York City.

Mr. Kunzig. Mr. Crowley, I see that you are not accompanied by counsel. You know that, of course, under the rules of this committee, you have the right to be so accompanied?

Mr. Crowley. Yes; I know that.

Mr. Kunzig. You were present in the room previously when I made a brief opening statement. Is it correct that you are testifying here voluntarily, today, at your own request?

Mr. Crowley. Yes.

Mr. Kunzig. Would you give us a brief résumé of your educational background?

Mr. Crowley. Well, I graduated from St. Thomas the Apostle Parochial School in about 1940 and from Brooklyn Technical High School in 1943, and from the University of Michigan in August 1950.

I did some graduate work at night at Columbia and I attended a drafting course at Mechanics Institute.

That about covers it.

Mr. Kunzig. Would you give the committee a brief résumé of your employment background, the major points, not just a few weeks employment, so to speak?

[fol. 362] Mr. Crowley. For the past roughly 3 years, I have been working in New York, and now I am working as a draftsman for an architectural firm in New York.

Before that I held various short-length jobs. I was a salesman. I worked in summer camps. I had my own landscaping business when I was in high school, things like that.

Mr. Kunzig. What is your present employment?

Mr. Crowley. As a draftsman for an architectural firm.

Mr. Kunzig. In New York City?

Mr. Crowley. Yes.

Mr. Kunzig. Mr. Crowley, where were you born and when?

Mr. Crowley. Woodhaven, Long Island, October 29, 1925.

Mr. Kunzig. Would you spell the name of the town, please?

Mr. Crowley. W-o-o-d-h-a-v-e-n.

Mr. Kunzig. When were you in attendance at Columbia University?

Mr. Crowley. From January 1946 until about April 1947. That was my freshman year.

Mr. Kunzig. While you were a student, did you join the Communist Party?

Mr. Crowley. Yes, not at Columbia.

Mr. Kunzig. You mean off campus?

Mr. Crowley. Yes.

Mr. Kunzig. Would you describe how you became a member of the Communist Party and what led you to become a member?

Mr. Crowley. Through some social acquaintances that I made after I got out of the Army, and one of those persons brought me into the party.

The reason I joined, I cannot think too clearly about that, but I know that it was because I was looking for some kind of a faith or an ideology. I lost my own and I was sort of floundering around and I hooked onto that and it buoyed me up.

Mr. Kunzig. Who got you to join?

Mr. Crowley. A woman named Ann Saymour.

Mr. Kunzig. Was she a resident of New York?

Mr. Crowley. Yes.

Mr. Kunzig. Can you give any further identification of Ann Saymour?

Mr. Crowley. No, I haven't seen her since 1946.

Mr. Clardy. Was she about your own age?

Mr. Crowley. Yes, a few years older.

Mr. Kunzig. You knew her to be a member of the Communist Party?

Mr. Crowley. Yes.

Mr. Kunzig. What group were you brought into in the party, what cell?

Mr. Crowley. A group on the upper west side in Manhattan, about 99th or 100th Street.

Mrc. Kunzig. Ninety-ninth and what?

Mr. Crowley. And 100th Street, between Amsterdam or Columbus Avenue.

Mr. Kunzig. Did this group have a name?

Mr. Crowley. Yes, the Connolly Club.

Mr. Kunzig. What sort of things took place at this Connolly Club?

[fol. 363] Mr. Crowley. Well, my activities were sort of Johnny Higgins work, selling the Daily Worker or circulat-

ing election petitions, and distributing circulars. That about covers it.

Mr. Jackson. Communist Party election petitions?

Mr. Crowley. I do not recall whether they were all Communist Party election petitions or whether they were for other candidates, but they were circulated through the club.

Mr. Velde. What year was this again, Mr. Crowley?

Mr. Crowley. 1946 to the early part of 1947.

Mr. Clardy. Were you of voting age at that time?

Mr. Crowley. No, I know I did not vote. I am 28 now. I was just about 21.

Mr. Scherer. If these were not Communist Party petitions, they were petitions for other parties whom the Communist Party had designated to be supported; is that right?

Mr. Crowley. Yes.

Mr. Clardy. May I inquire on that point, Mr. Chairman?

Mr. Velde. Mr. Clardy.

Mr. Clardy. Can you give us the name of the party?

Mr. Crowley. Well, I think it was the American Labor Party.

Mr. Clardy. That was the one I had in mind. Was there a Liberal Party?

Mr. Crowley. Yes, but we did circulate their petitions, to my knowledge.

Mr. Clardy. Primarily, the American Labor Party?

Mr. Crowley. Yes.

Mr. Clardy. Thank you, Mr. Chairman.

Mr. Kunzig. You circulated the petitions of the American Labor Party as a member of the Communist Party yourself?

Mr. Crowley. Yes.

Mr. Kunzig. That was, of course, as you have specified, under specific directions and instructions of the Communist Party so to do?

Mr. Crowley. Yes.

Mr. Kunzig. Is there anything else, any other activity that took place during the brief period of time that you were in New York as a member of the party?

Mr. Crowley. Well, there were rallies of various sorts, political rallies. I think there was one in Madison Square Garden for some purpose, but I cannot remember now what

the occasions were. They were political rallies that were sponsored either by the Communist Party or by other groups that I attended.

Mr. Kunzig. One of the questions on which you were cited for contempt was the question: "Have you ever at any time been a member of the Communist Party?"

That question, of course, you have now answer to me "Yes" and you started giving details about your membership.

Will you tell the committee—and I know you want an opportunity to tell the committee why you took the viewpoint that you took a year ago in 1953, or why you have supported that particular viewpoint and came back here today.

Mr. Crowley. Yes, I think I can do that pretty briefly.

I know that at that time I no longer believed in the entire movement and I had no sympathy with it, but my purpose [fol. 364] in not testifying was to protect other people who I thought might get in the same boat that I was in and might suffer a lot of damage, either socially or economically because of my testimony, and also I was a little bit footloose at the time.

Mr. Clardy. May I inquire, Mr. Chairman?

Mr. Velde. Yes, Mr. Clardy.

Mr. Clardy. By that, are you trying to tell us that there was not remaining any vestige of the ideological conviction that you had had?

Mr. Crowley. Yes, sir; none.

Mr. Clardy. You had abandoned those convictions, is that right?

Mr. Crowley. That is right.

Mr. Clardy. And at that time, you were motivated entirely by the things you just mentioned?

Mr. Crowley. Yes.

Mr. Clardy. You were no longer in sympathy with the objectives and the purposes of the Communist Party?

Mr. Crowley. Not at all.

Mr. Jackson. Mr. Chairman, may I ask a question?

Mr. Velde. Mr. Jackson.

Mr. Jackson. You say you were hesitant to give your testimony previously because of the fact that you might involve other persons?

Mr. Crowley. Yes.

Mr. Jackson. Do you know whether or not any of those other individuals have since left the Communist Party and are no longer a part of that organization?

Mr. Crowley. No, not that I know of. I took it upon myself.

Mr. Jackson. In spite of the fact that you did not know at that time whether or not these people were still a part of the Communist Party apparatus?

Mr. Crowley. No, I did not know that.

Mr. Jackson. One more question which I think should go into the record at this time: Have you ever been offered any immunity, any promise or reward by any member of the staff in connection with your appearance here today?

Mr. Crowley. No, none whatsoever. I am here on my own.

Mr. Velde. And you have not been offered any immunity from prosecution by any member of the committee itself, we sitting up here?

Mr. Crowley. No, sir.

Mr. Clardy. Is it fair to say that your own conscience and your own love for your country may have prompted you to come forward?

Mr. Crowley. Yes, that is the reason.

Mr. Scherer. It might have been a little fear of the results of the citation that prompted him, too.

Mr. Crowley. Well, I can answer that if I may.

Mr. Kunzig. Go right ahead.

Mr. Crowley. Because I see no reason for my suffering a penalty for something that I no longer believe in. I see no reason for suffering as a scapegoat for something I do not believe in.

Mr. Scherer. Would you have come back if this committee had not cited you for contempt?

Mr. Crowley. I believe I would.

Mr. Scherer. You are not sure of that?

[fol. 365] Mr. Crowley. I believe I would, sir.

Mr. Scherer. It was not until after you were cited for contempt and faced a penalty, however, that you made up your mind to come back.

Mr. Crowley. That is right.

Mr. Kunzig. In regard to the statement you made about not wishing to name others, I think the record should be

clear that you did not answer any questions, even about yourself, a year ago.

Mr. Crowley. That is right.

Mr. Kunzig. I believe you said, "It would be cowardice to answer any questions about my past life to anyone that I did not want to."

Mr. Crowley. Yes, sir.

Mr. Kunzig. And then you just said that you wouldn't answer.

Mr. Crowley. Yes.

Mr. Kunzig. But today you are here to give the full answers and I want to ask you whether your actions a year ago were based on your own convictions or whether you did not at that time talk to anyone?

Mr. Crowley. I had been going to a few people at that time. I spoke to a lawyer and he told me that I could cite the fifth amendment. That was the only legal way I could refuse to answer and I did not want to do that, and I did not take his advice and I did not retain him as counsel. That was the reason why I came down without a lawyer. I was working on a construction job renovating a church and I met the priest of the church and I talked with him and he told me the only thing to do would be to come down and testify.

Mr. Kunzig. That was a year ago?

Mr. Crowley. Yes; that was his advice and I did not follow that because I told him what I told you; I did not want to involve other people.

Mr. Kunzig. Where did you move to when you left New York City?

Mr. Crowley. To Boston.

Mr. Kunzig. When was that?

Mr. Crowley. In 1947, the spring of 1947.

Mr. Kunzig. Did your Communist Party activities move along with you?

Mr. Crowley. They did move with me, but almost by accident.

Mr. Kunzig. Explain that, will you?

Mr. Crowley. Yes; I moved to Boston. I quit school in the middle of the term and I was unable to do the work and I was looking for something else to do, somewhere to go,

and I moved to Boston because I knew someone there who had been in the Army with me and I thought I could, you know, get a better start on things and a transfer was given to me to Boston.

When I arrived in Boston, a Communist Party transfer—when I arrived in Boston I waited sometime before I had contact with the Communist Party.

Mr. Kunzig. Will you tell the committee just what you mean by Communist Party transfer? How does that work?

Mr. Crowley. At that time, as I recall, I received a letter or a card, I think it probably was a card, to present in Boston when I arrived and I do not remember exactly what it was, but it was something of that nature.

Mr. Kunzig. Did you present that card when you arrived in Boston?

Mr. Crowley. I did eventually.

[fol. 366] Mr. Kunzig. To what, the Communist Party up there?

Mr. Crowley. Yes. No, not to the Communist Party. To someone who told me that they would handle the tranfer for me and get me into the Communist Party in Boston.

Mr. Kunzig. Do you remember who that someone was?

Mr. Crowley. No, I cannot recall that name now, I am sorry.

Mr. Kunzig. What activities did you get into as a member of the Communist Party in Boston?

Mr. Crowley. They were almost the same as the activities I had in New York. There was electioneering. I think that was for the—there was the Wallace movement starting then and I did quite a bit of work on that, either collecting signatures to have the third party nominated, or passing out handbills, and I also worked as a clerk-typist for the National Council of American-Soviet Friendship.

Mr. Clardy. The what?

Mr. Crowley. The National Council of American-Soviet Friendship.

Mr. Clardy. All at the direction of the Communist Party leader governing your cell?

Mr. Crowley. Yes, this was controlled by them.

Mr. Kunzig. Any activities you had for the Wallace movement was done at the request of the Communist Party?

Mr. Crowley. Yes.

Mr. Kunzig. To the best of your recollection, Mr. Crowley, when did this Wallace movement begin in Boston?

Mr. Crowley. I do not recall. I think it might have been there when I arrived.

Mr. Kunzig. When was that?

Mr. Crowley. In 1947. When I joined it, it already was a going concern, so to speak.

Mr. Kunzig. Did you ever circulate Communist Party petitions in Springfield, Mass.?

Mr. Crowley. Yes; I did.

Mr. Kunzig. Would you tell the committee about that?

Mr. Crowley. That was for two or three days I circulated a petition for the election, for the nomination of Sidney Lippman or Lipsher,[1] who was running for an office in Springfield on the Communist Party ballot.

Mr. Kunzig. You do not remember the name more definitely than Lippman or Lipsher?

Mr. Crowley. No.

Mr. Clardy. Was he running for a municipal office?

Mr. Crowley. Yes, in the city of Springfield.

Mr. Kunzig. While in Boston, what Communist Party group were you assigned to, if any?

Mr. Crowley. I was in the West End group.

Mr. Kunzig. That I believe also, Mr. Crowley, was one of the questions for which you were cited:

> When you were in Boston, Mass., were you a member of the West End group of the Communist Party? Have you ever been associated with any members of the West End group of the Communist Party of Boston?

[fol. 367] That was one of the questions you refused to answer.

Mr. Crowley. Yes.

Mr. Kunzig. You say now you were a member of the West End group?

Mr. Crowley. Yes.

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[1] Information in the files of the committee indicates correct spelling of name to be Sidney Lipshires.

Mr. Kunzig. Tell us now how you got into the group and what you did in the group.

Mr. Crowley. I got in and the group took the transfer which I had from New York City. I eventually made contact with someone. I think it might have been someone working in one of the other organizations that were there, either the Wallace movement or the National Council of American-Soviet Friendship, and then I got into the group that way and began activities.

Mr. Kunzig. Can you recall any of the members of the Communist Party whom you knew to be members of the Communist Party during your time in Boston?

Mr. Crowley. Yes, I can recall a few. There was Otis Hood, I remember.

Mr. Kunzig. How do you spell that man's name?

Mr. Crowley. H-o-o-d. He ran for office in Boston for the school board or the school committee, and I campaigned for him in the city of Boston with election petitions.

Then there were leaders I knew. I just knew them as being leaders, Daniel Boone Schirmer.

Mr. Kunzig. What was his position in the West End group?

Mr. Crowley. He was not in the West End group. He attended a few meetings and conducted discussions on various themes, political topics. He was an officer of the party in Boston, Mass.

Mr. Kunzig. And you knew Otis Hood and Daniel Boone Schirmer to be members of the Communist Party?

Mr. Crowley. Yes.

Mr. Kunzig. Is there any way you can identify them more clearly than that, either by their ages or anything of that nature?

Mr. Crowley. Daniel Boone Schirmer I would say was about 30 years old at that time, and Otis Hood was an older man. He was in his forties or fifties; about 50, I would say.

Mr. Clardy. Were any of those candidates successful?

Mr. Crowley. No, I do not think so.

Mr. Clardy. They did not then acquire these official positions?

Mr. Crowley. No, they did not.

Mr. Kunzig. When did you leave Boston?

Mr. Crowley. Well, about August or September of 1947, that same summer, the same year.

Mr. Kunzig. Where did you move to?

Mr. Crowley. I went to Michigan.

Mr. Kunzig. What city?

Mr. Crowley. To Ann Arbor, Mich., with the intention of going back to school. I had not been going to school that year.

Mr. Clardy. The University of Michigan at Ann Arbor?

Mr. Crowley. The University of Michigan.

Mr. Clardy. Did you enroll as a student?

Mr. Crowley. Yes, I got a transfer from Columbia and was accepted.

Mr. Kunzig. In what college?

[fol. 368] Mr. Clardy. Arts, literature, and science?

Mr. Kunzig. Commonly called the lit school on the campus?

Mr. Crowley. Yes.

Mr. Clardy. That is my school, by the way.

Mr. Kunzig. When you went to Michigan, did you stay there until you graduated?

Mr. Crowley. Yes.

Mr. Kunzig. When did you graduate?

Mr. Crowley. In August 1950.

Mr. Kunzig. During that period of time did you live at Ann Arbor?

Mr. Crowley. Yes, all the time.

Mr. Kunzig. So the period of time that we are now talking about at Michigan was from the end of 1947 up until 1950?

Mr. Crowley. Yes.

Mr. Kunzig. Was your Communist Party membership transferred again, this time from Boston to Ann Arbor?

Mr. Crowley. Yes, it was.

Mr. Kunzig. Did you have to ask about that or did they transfer automatically?

Mr. Crowley. They transferred me automatically.

Mr. Clardy. Who do you mean by "they"?

M. Crowley. The Communist Party in Boston sent me a transfer out to Michigan, as I recall, and I do not remember now to whom they sent it, but I know I was contacted some time after I arrived there.

Mr. Kunzig. Which of the cells, the Ralph Neafus?

Mr. Crowley. Yes, the student group.

Mr. Scherer. You left Michigan when?

Mr. Crowley. August of 1950.

Mr. Kunzig. I think the record should show that Bereniece Baldwin, who testified before this committee and who kept the records at that time of the Communist Party, had the record, as testified to by this witness, of his transfer from Boston to Ann Arbor, Mich.

Mr. Crowley, as a matter of interest, how long did it take for the Communist Party to approach you when you got to Ann Arbor? Did they get to you pretty quickly, if you recall?

Mr. Crowley. It was some time before I started school in February 1948, January 1948. It was sometime during the fall of 1947, I cannot recall exactly when.

Mr. Kunzig. The transfer was dated October 1947.

Mr. Crowley. October? Well, then, it was given after I left Boston. It was sent out afterward.

Mr. Kunzig. What group did they put you in or did you get in out at Ann Arbor?

Mr. Crowley. The Ralph Neafus, spelled N-e-a-f-u-s or N-e-a-p-h-u-s, I do not recall.

Mr. Kunzig. The Ralph Neafus in Ann Arbor, Mich.

Mr. Crowley. Yes, that is right.

Mr. Kunzig. Was that comprised of students of the university?

Mr. Crowley. Students in the University of Michigan.

Mr. Kunzig. Undergraduates or graduates?

Mr. Crowley. Undergraduates.

Mr. Clardy. Where was its headquarters in Ann Arbor?

[fol. 369] Mr. Crowley. The headquarters—it had no central headquarters. The meetings were held at various places, various residences of different students. Some were married and they had apartments.

Mr. Clardy. Didn't they have some place for a regular meeting place?

Mr. Crowley. There was a chairman of the group, Ernest Ellis. His house was more or less the central focal point of the group there.

Mr. Clardy. Where was that located, what street?

Mr. Crowley. I do not remember that. It was a good walk from the campus, I think.

Mr. Clardy. Which direction, toward Ferry Field?

Mr. Crowley. I think going toward the arboretum, on that side of the campus, but I don't know whether it was north or south of the campus.

Mr. Velde. Can you tell the committee how it happened to be named the Ralph Neafus group?

Mr. Crowley. Let me see, yes, I think Ralph Neafus was a young man from some time back or a socialist who had done something to gain himself recognition or fame.

Mr. Velde. I am informed by our investigator that he was a member of the Abraham Lincoln Brigade during the Spanish Civil War.

Mr. Crowley. I forgot that.

Mr. Velde. You recall there were a number of so-called heroes of that war, and I understand that Ralph Neafus was killed in that action.

Mr. Kunzig. You mentioned Ernest Ellis. Who was he?

Mr. Crowley. He was the chairman of the group.

Mr. Kunzig. Of the Ralph Neafus group?

Mr. Crowley. Yes.

Mr. Kunzig. And you knew him as a member of the Communist Party?

Mr. Crowley. Yes, he was an open Communist on the campus there. He was known to be a Communist.

Mr. Kunzig. In these various names that you are going to tell the committee about, I want to be sure that you understand that we are interested in only those people whom you knew to be members of the Communist Party, not those whom you suspected or thought, but those whom you knew to be members of the Communist Party.

Mr. Crowley. Yes.

Mr. Kunzig. Can you tell us any of the other members of the Ralph Neafus group?

Mr. Crowley. There was a Bill Carter who was also an open Communist on the campus.

Mr. Kunzig. Was he also at one time chairman of the Ralph Neafus group?

Mr. Crowley. Yes, I think he was for a short time.

Mr. Clardy. May I inquire?

Mr. Velde. Mr. Clardy.

Mr. Clardy. This organization was a secret organization, was it not?

Mr. Crowley. Not completely, no.

Mr. Clardy. Was it registered in any way with the university authorities?

Mr. Crowley. Oh, no, it was not registered.

[fol. 370] Mr. Clardy. The reason I asked that was you mentioned two who were known openly as members of the party.

Mr. Crowley. Yes.

Mr. Clardy. All of the members of the Ralph Neafus group, including yourself, did not want that identification to become public?

Mr. Crowley. That is right.

Mr. Clardy. You kept it concealed?

Mr. Crowley. Yes, that is right.

Mr. Clardy. And your meetings were secret? You conducted them in a way that you did not attract attention?

Mr. Crowley. Yes, for the most part. If I could add something——

Mr. Clardy. Proceed.

Mr. Crowley. There were open meetings at which the Ralph Neafus group invited anyone who wanted to attend to, you know, attend the meeting and sort of talk on current events.

Mr. Clardy. But without identifying it as a Communist Party meeting, is that not true?

Mr. Crowley. No, at times it was known to be—no, not identifying it as a Communist Party meeting, that is right.

Mr. Clardy. They identified it more or less as a meeting of liberals and progressives and all the other words the Communists ordinarily use?

Mr. Crowley. Yes, study group.

Mr. Clardy. Trying to suck in as many as they could discover as to who would be vulnerable to further Communist Party indoctrination?

Mr. Crowley. Yes.

Mr. Kunzig. You mentioned Bill Carter. Can you give us Bill Carter's full name?

Mr. Crowley. Just Bill Carter. I guess William Carter. I don't know if he had any other initials.

Mr. Kunzig. Are there any other members of the Ralph Neafus group that you can recall?

Mr. Crowley. Yes, there was another person who served as a chairman at the meeting for a while. Now, what is his name? I'm trying to think of it. Marvin Gladstone.

Mr. Kunzig. Marvin Gladstone?

Mr. Clardy. Do you know whether or not he is now a member of it or, rather, do you know where he is now?

Mr. Crowley. No, I don't know.

Mr. Kunzig. I think the record should show, Mr. Chairman, that a Marvin Gladstone was also identified by Bereniece Baldwin as chairman of the Washtenaw section of the Communist Party. That identification by Bereniece Baldwin was in 1952. You knew him as the chairman of the Ralph Neafus group?

Mr. Crowley. That is right.

Mr. Kunzig. Is there any other information you can give us about him?

Mr. Crowley. No. He was married and was a student there. There is not much else I can say.

Mr. Clardy. Was he married at that time?

Mr. Crowley. Yes, I knew him.

[fol. 371]. Mr. Clardy. Was his wife's name, first name Evelyn?

Mr. Crowley. I believe it was; I cannot swear to that.

Mr. Clardy. We had such a person under subpena out in Michigan. Was she a member of that same group?

Mr. Crowley. Yes.

Mr. Kunzig. And you knew her to be a member of the Communist Party?

Mr. Crowley. The Neafus group.

Mr. Kunzig. Of the Communist Party?

Mr. Crowley. Yes.

Mr. Kunzig. If you will search your memory, will you please give us any other names of people whom you can recall who were members of the Ralph Neafus group with you?

Mr. Crowley. There was a Roosevelt Ward.

Mr. Kunzig. Roosevelt Ward. You knew him to be a member of the Ralph Neafus group?

Mr. Crowley. Yes.

Mr. Kunzig. Was he a student, as you were?

Mr. Crowley. Yes.

Mr. Kunzig. All these were students; is that right?

Mr. Crowley. I think Ward was a part-time student. I do not recall if he was a full-time student.

Mr. Kunzig. I think the record should show that Roosevelt Ward was cited as a leader of the Labor Youth League and was indicted under the national draft law but was not convicted.

You knew him to be a member of the Communist Party?

Mr. Crowley. Yes.

Mr. Kunzig. Of your own personal knowledge?

Mr. Crowley. Yes, I attended meetings with him.

Mr. Kunzig. Any other members of the Ralph Neafus group?

Mr. Crowley. Yes, there was a Millicent or a Mildred Federbush.

Mr. Kunzig. Mildred Federbush?

Mr. Crowley. Or Millicent.

Mr. Kunzig. I believe the correct name is Mildred Federbush. And you knew Mildred Federbush to be a member of the Ralph Neafus group?

Mr. Crowley. Yes, she attended meetings there.

Mr. Kunzig. Did you know Edward Yellin?

Mr. Crowley. Yes, he was also a member of the Ralph Neafus group.

Mr. Kunzig. Of the Communist Party?

Mr. Crowley. Yes; and Edward Shaffer. He was also a Communist on the campus, an open Communist, I think he was at that time.

Mr. Clardy. There is no doubt about Mr. Shaffer being a member of the Communist Party?

Mr. Crowley. No, he was there. That is the only basis of evidence for saying that. In fact, we can have any person attending the meeting.

Mr. Clardy. He was one of the fifth amendment witnesses we had in Michigan recently.

Mr. Jackson. Mr. Chairman.

Mr. Velde. Mr. Jackson.

Mr. Jackson. May I make the point that we do not need to unduly labor the point as to whether the witness knows [fol. 372] these to be members of the Communist Party. One criteria for attendance at a closed meeting with other members—you understand that is one of the criteria.

Mr. Crowley. Yes.

Mr. Velde. I am glad that the gentleman made that statement with respect to the criteria for determining whether a person is a member of the Communist Party or was a member of the Communist Party, because we know that the Communists no longer identify each other by cards, and no longer carry identification cards. We can be fairly certain, however, that if they attend closed meetings, they certainly must have been members of the Communist Party.

If I understood you, you said that this man, this person you have last mentioned, was an open Communist. Can you explain that a little more fully, please?

Mr. Crowley. Yes. To my recollection he made it known publicly—or perhaps I am confusing him with the other open Communist I mentioned, William Carter, but Shaffer certainly was very active on the campus and openly so, and there was no doubt in anyone's mind that he was a Communist.

Mr. Jackson. Open or secret, you knew him to be a member of the Communist Party?

Mr. Crowley. Yes.

Mr. Velde. What period of time was this?

Mr. Crowley. The period I was there from 1947 and 1948 through 1950. I was actually enrolled as student from 1948 on.

Mr. Clardy. I think we had better spell his last name. It isn't the customary way it sounds.

Mr. Crowley. No.

Mr. Clardy. Was it S-h-a-f-f-e-r?

Mr. Crowley. It might have been.

Mr. Clardy. That is the way it appeared under his subpena. Where did he live?

Mr. Crowley. I don't know the name of the street. It was almost at an intersection of State Street and another street I cannot recall.

Mr. Clardy. South of State Street?

Mr. Crowley. Yes.

Mr. Clardy. Down Packard?

Mr. Crowley. Yes; down Packard, almost at State.

Mr. Kunzig. Mr. Crowley, are there any other members of the Ralph Neafus group whom you recall?

Mr. Crowley. Yes, I can recall them. My mind is a little confused right now. Let me think a moment.

There was a Jean Fagan.

Mr. Kunzig. J-e-a-n?

Mr. Crowley. That is right.

Mr. Clardy. Where did she come from?

Mr. Crowley. From Michigan; some town in Michigan.

Mr. Clardy. Was it East Lansing?

Mr. Crowley. Yes, I believe it was; Lansing or East Lansing.

Mr. Clardy. Do you recall the first name of either of her parents?

Mr. Crowley. No, I never met the family.

Mr. Clardy. You wouldn't recognize it if I mentioned it?

Mr. Crowley. No, not the parents. I knew she had 1 or 2 sisters, but I did not know them as persons.

[fol. 373] Mr. Clardy. Do you know where she may be now?

Mr. Crowley. No, I have no idea.

Mr. Kunzig. Do you know John and Betty Houston?

Mr. Crowley. Yes, I did know them.

Mr. Kunzig. Were they husband and wife?

Mr. Crowley. Yes.

Mr. Kunzig. Were John and Betty Houston members of the Ralph Neafus group?

Mr. Crowley. Yes.

Mr. Kunzig. How about Calvin and Alvin Lippett?

Mr. Crowley. Yes, I think. I cannot swear to both of them. I know one was and they looked alike.

Mr. Kunzig. And you never knew whether it was Cal or Al?

Mr. Crowley. I could not swear to that.

Mr. Kunzig. But at least one of them was a member?

Mr. Crowley. They both may have been.

Mr. Kunzig. Did you ever see the two of them at one time at a meeting?

Mr. Crowley. No, not at a meeting. I saw them together.

Mr. Clardy. Did you ever have conversation with either or both of them outside of these meetings?

Mr. Crowley. Yes, I think I did, just in the course of being on the campus with them.

Mr. Clardy. But you were not able to tell Al from Cal?

Mr. Crowley. It was hard, it was very hard.

Mr. Kunzig. How about George Sarver?

Mr. Crowley. Yes, for a time he was. I believe he dropped out. As I recall, he did.

Mr. Kunzig. During the time you were there you knew him to be a member of the Communist Party?

Mr. Crowley. Yes.

Mr. Kunzig. Can you give us any further identification of George Sarver; his age, address, or where he came from?

Mr. Crowley. He was in his early twenties. He came from maybe Detroit, and that is about all I can say. He was a student there.

Mr. Kunzig. Any other member of Ralph Neafus? Suppose I refresh your memory with some names.

How about Patricia Fiske Ellis?

Mr. Crowley. Yes, Ernie and Patricia. She was Ernie Ellis' wife.

Mr. Kunzig. And you knew her to be a member of the Ralph Neafus group?

Mr. Crowley. Yes.

Mr. Kunzig. I am just taking the Ralph Neafus people. How about Jeanne Tozer?

Mr. Crowley. Yes, I recall her. She was a member.

Mr. Kunzig. Do you know where she came from or any other identification?

Mr. Crowley. No.

Mr. Kunzig. Just that she was a student there also in Ralph Neafus.

Mr. Crowley. Yes.

Mr. Kunzig. How about Roselva Rushton Goodman?

Mr. Crowley. Yes, she was in the Neafus group, yes.

Mr. Kunzig. Was she married?

[fol. 374] Mr. Crowley. Yes, I forget her husband's name. I remember him. He was there also.

Mr. Kunzig. Would it have been Kenneth Goodman?

Mr. Crowley. Kenneth or Leonard. It was Lennie or Kenny.

Mr. Kunzig. Kenneth Goodman, and he was Roselya Rushton Goodman's husband, and you knew both of them as members of Ralph Neafus?

Mr. Crowley. Yes.

Mr. Kunzig. Can you identify them any further as to their address or ages?

Mr. Crowley. No. They were both students. I don't remember their address.

Mr. Kunzig. Jack Alexander Lucas?

Mr. Crowley. Yes, he was there at the time. I don't know if he was there all the time I was there.

Mr. Kunzig. But you knew Jack Alexander Lucas definitely to be a member of the Communist Party?

Mr. Crowley. Yes.

Mr. Kunzig. Jack Gore?

Mr. Crowley. I remember Jack but I do not recall if he was a member of Neafus. I had seen him. I saw him only a few times. I do not remember him attending a meeting as a member of Neafus.

Mr. Kunzig. Did you know him as a member of the Communist Party?

Mr. Crowley. No, not from being in a Communist Party meeting.

Mr. Kunzig. Was he a student in the University of Michigan?

Mr. Crowley. I do not think he was when I was there. I think he was living somewhere else, maybe in Detroit or Ypsilanti, or something like that.

Mr. Velde. The Ralph Neafus group was not composed entirely of students; is that right?

Mr. Crowley. I cannot remember anyone now who was not a student that I could swear to. I cannot remember.

Mr. Kunzig. I think the record should show, Mr. Chairman, that other testimony before this committee has identified Jack Gore as having been a member of the Communist Party as first chairman of the Labor Youth League of

Michigan and as a member of the Young Communists of Michigan.

Your testimony is that you knew Jack Gore but you do not recall his having attended meetings with you?

Mr. Crowley. Yes.

Mr. Velde. At that time there was a Labor Youth League organization on the campus of the University of Michigan?

Mr. Crowley. Yes, there was.

Mr. Velde. But that was separate and distinct from the Ralph Neafus group?

Mr. Crowley. Yes.

Mr. Velde. Mr. Clardy.

Mr. Clardy. Was there not some common membership, some people belonging to both?

Mr. Crowley. Yes; as a matter of fact, I think I belonged to the Labor Youth League, too.

Mr. Clardy. Who was the head of it at that time?

[fol. 375] Mr. Crowley. I think it was Eddie Shaffer.

Mr. Clardy. Do you know who succeeded him?

Mr. Crowley. No.

Mr. Clardy. Did you ever hear the name Baxter?

Mr. Crowley. No.

Mr. Jackson. May I inquire, Mr. Chairman?

Mr. Velde. Mr. Jackson.

Mr. Jackson. May I inquire as to whether or not there is still on the campus of the University of Michigan a labor youth group?

Mr. Clardy. The testimony that we took in Michigan indicates that it was not entirely dead and there's a man by the name of Sharpe who heads it up.

Had you ever heard about Mr. Sharpe?

Mr. Crowley. No, I do not remember that name.

Mr. Velde. Did you ever know anyone in the labor youth group who was not a member of the Communist Party?

Mr. Crowley. There were, I think there certainly were members of the Labor Youth League who were not members of the Communist Party who were in it for some other reason. There certainly were, because I am sure that the membership must have been bigger than that of the Ralph Neafus group.

Mr. Velde. How about the officers of the Labor Youth League?

Mr. Crowley. Well, Shaffer was an officer and I believe Eddie Yelin was. They were both Communists.

Mr. Velde. I think the record should show that the Labor Youth League has been cited as a Communist organization by the Attorney General of the United States and I think by this committee. It has been mentioned several times as a Communist organization.

Mr. Jackson. May the record show that the witness Barbara Hartle, during the Seattle, Wash., hearing, testified that out of her personal knowledge in Cain County and the Pacific Northwest generally that the Labor Youth League was controlled and dominated by the Communist Party in that area.

Mr. Velde. Yes, I think there is considerable other testimony to show that the Labor Youth League is a part and parcel of the Communist plan to take over the world.

Mr. Clardy. It originated with them.

Mr. Velde. And that the Labor Youth League is a successor to the Young Communist League and the American Youth for Democracy.

Mr. Kunzig. Did you ever know a Freda Perez?

Mr. Crowley. No, I do not recall her being in the Neafus group.

Mr. Kunzig. Did you know her in the Haldane group?

Mr. Crowley. Yes, I remember her but I cannot swear that she was a member of the Haldane group. I remember seeing her but I do not know whether she was or not.

Mr. Kunzig. Seeing her at meetings of what?

Mr. Crowley. Of the Haldane group.

Mr. Kunzig. You don't know whether she was at closed Communist Party meetings?

Mr. Crowley. No, I do not recall that.

Mr. Kunzig. Did she later become Mrs. Beberfall?

Mr. Crowley. Yes.

[fol. 376] Mr. Clardy. I want to ask one further question. You named a great many and you probably will think of some more. Wasn't the membership in the Ralph Neafus Club a changing one as students came into the institution

and went out so that the total was rather staggeringly large over a period of time?

Mr. Crowley. Yes, someone said it was like a revolving door.

Mr. Clardy. I have heard that phrase before. So, while you have named and are naming as many as you can recall, it evidently had a great many more students in it than those that you have or will name.

Mr. Crowley. Yes.

Mr. Clardy. It was interesting itself in pretty nearly every campus activity that went on in an effort to influence the resolutions and influence the actions of those other groups, was it not?

Mr. Crowley. Yes, it had a great deal of influence because a lot of the people went into other organizations.

Mr. Clardy. Didn't it also have an organized campaign of writing letters to the editor of the Michigan Daily on the hot issues before you?

Mr. Crowley. Yes, I wrote some myself.

Mr. Clardy. So that they were using every method that Communists could devise to influence the student body opinion in the direction of the Communist movement.

Mr. Crowley. Yes.

Mr. Walter. Where was the headquarters of the Labor Youth League?

Mr. Crowley. That I don't know. It is in New York City, I believe.

Mr. Walter. Do you know who the head of it is?

Mr. Crowley. No, I do not.

Mr. Walter. The principal officers?

Mr. Crowley. No.

Mr. Walter. Do you know any of the national officers?

Mr. Crowley. No, not to my knowledge.

Mr. Walter. Is this man Ward you mentioned a moment ago an officer in the national organization?

Mr. Crowley. He may be. He was in the Labor Youth League when I knew him.

Mr. Walter. But he was not located in Michigan. He came there to meetings.

Mr. Crowley. That is right.

Mr. Velde. At this point the committee will be in recess for 10 minutes.

(Whereupon, at 11:33 a. m., an 8-minute recess was taken.)

Mr. Velde. The committee will be in order.

Proceed, Mr. Counsel.

(Representative James B. Frazier, Jr., left the hearing room at this point.)

Mr. Kunzi. Mr. Crowley, we were talking about the Ralph Neafus Club when we took a short break. Can you give us the benefit of your knowledge of any other people in the Ralph Neafus Club of the Communist Party who met with you?

Mr. Crowley. Yes; I can recall one fellow named Leon Brown. The fellow I recall was tall and heavy set, and I do [fol. 377] not think it should be confused with anyone else because Brown is quite a common name. I think I knew quite a few students on the campus named Brown.

Mr. Clardy. Where did he hail from?

Mr. Crowley. From New York or Brooklyn, I believe.

Mr. Kunzig. According to the records of the university, Mr. Chairman, Leon Brown was born on September 25, 1927, in New York City.

Can you think of any other members of the Ralph Neafus Club?

Mr. Crowley. Yes; there was a member from Tennessee or somewhere in the south named Al Milstein.

Mr. Clardy. Born in Tennessee?

Mr. Crowley. I believe he was.

Mr. Kunzig. Did he hold any office in the Ralph Neafus Club?

Mr. Crowley. He held some kind of an office. I forget what it was; either keeping the attendance record or treasurer, I forget what it was; I believe treasurer.

Mr. Clardy. Do our files reflect a different birthplace for this Al Milstein? It runs in my mind that Tennessee is wrong.

Mr. Kunzig. He is under subpena and I believe he came

to Michigan from Mississippi. I believe his name is Alfred Milstein.

Mr. Crowley. Yes.

Mr. Kunzig. To continue the listing of these names of people from Ralph Neafus, would you give us any others you know?

Mr. Crowley. Well, for a time there was a member named Lee Salk. I believe he dropped out. He dropped out of Neafus, I think, while I was there.

Mr. Clardy. Where was he from?

Mr. Crowley. He was from New York.

Mr. Kunzig. Can you identify him in any further way?

Mr. Crowley. No, he was a psychology student there. I forget whether he had any job at the university.

Mr. Clardy. He was not on the quiet side of a personality, was he, or what is the fact?

Mr. Crowley. No, Salk was a kind of go-getter. He hustled around.

Mr. Clardy. An enthusiastic party member.

Mr. Crowley. Yes, he was enthusiastic in general. He was just that way.

Mr. Clardy. That is all I have on that point.

Mr. Kunzig. Do you know a Joan Studer?

Mr. Crowley. Yes, I remember her.

Mr. Kunzig. In Ralph Neafus?

Mr. Crowley. Yes.

Mr. Kunzig. Any further identification of Joan Studer?

Mr. Crowley. No, I cannot identify her further.

Mr. Kunzig. Do you know where she is today?

Mr. Crowley. No, I believe she came from the East, possibly New York.

Mr. Jackson. What was her major?

Mr. Crowley. I cannot recall what she studied.

Mr. Clardy. You knew her in the Lit College?

Mr. Crowley. Yes, in the Neafus Club.

Mr. Kunzig. Any other Neafus Club members?

[fol. 378] Mr. Crowley. There was a Bernard Poll, and I remember he told me he was a teaching fellow there. In fact, that is what he told everyone, a teaching fellow in the philosophy department.

Mr. Kunzig. You knew him to be a member of Neafus?

Mr. Crowley. Yes, he certainly was a member.

Mr. Kunzig. Any others, Mr. Crowley? We are still talking about Neafus.

Mr. Crowley. Yes; for a while there was a Bob Silk. I believe he dropped out. He left.

Mr. Kunzig. Do you know whether his full name was Robert H. Silk?

Mr. Crowley. Robert.

Mr. Kunzig. You don't know about the middle initial?

Mr. Crowley. No.

Mr. Kunzig. Can you give us any further identification about him?

Mr. Crowley. I believe he was a law student at the time and he was married. I think he dropped out while I was still in Neafus, or he moved over or something like that.

Mr. Kunzig. But you knew him definitely to be a member of the Communist Party at the time you were there at the University of Michigan?

Mr. Crowley. That is right.

Mr. Kunzig. How about Hy Bershad?

Mr. Crowley. Yes, he was a member of the Neafus Club.

Mr. Kunzig. Do you know his full name?

Mr. Crowley. No, Hy Bershad is as close as I can get to it.

Mr. Kunzig. Would it have been Hyman Abe Bershad, or does that ring a bell?

Mr. Crowley. No.

Mr. Kunzig. How about Ed Freeman?

Mr. Crowley. I remember the name but I cannot place the face, and so I cannot say definitely, but he was very active.

Mr. Kunzig. In what?

Mr. Crowley. On the campus. He was in, I believe, the [Labor] Youth League.

Mr. Kunzig. You said he was active on the campus. As I said, we are interested only in those who were members of the party. Are you saying that you don't know whether he was a member of the party?

Mr. Crowley. Yes; because I cannot remember his face.

Mr. Clardy. I don't understand that question.

Mr. Crowley. I cannot remember him being at a party meeting. I don't know what his face looks like, but the name rings a bell in my mind.

Mr. Clardy. You cannot remember whether he was or was not?

Mr. Crowley. Yes, he was; but I cannot remember his face.

Mr. Jackson. Had you ever worked with Ed Freeman upon any Communist Party project?

Mr. Crowley. I do not remember. If he was in the Ralph Neafus Club, because we all worked together on those things, but I do not remember specifically that he and I worked on it.

Mr. Kunzig. But you knew an Ed Freeman, even if you cannot place his face, to be a member of the Communist Party?

Mr. Crowley. Yes.

[fol. 379] Mr. Kunzig. Are there any other names that you can recall?

Mr. Crowley. Yes, there was Ed Pita.

Mr. Kunzig. Would that be Edward Gerald Pita, or did you know him as Ed?

Mr. Crowley. I just knew him as Ed.

Mr. Kunzig. You knew him as Ed Pita?

Mr. Crowley. Yes.

Mr. Kunzig. You knew him to be in the Neafus group?

Mr. Crowley. Yes.

Mr. Kunzig. Was he married?

Mr. Crowley. Yes; her name was Phyllis Pita.

Mr. Kunzig. You knew her to be a member of the party, too?

Mr. Crowley. Yes, the Ralph Neafus Club.

Mr. Clardy. Where did they come from?

Mr. Crowley. That I don't know.

Mr. Kunzig. Did you know a James Terrell?

Mr. Crowley. Yes, Jim Terrell was a member of Neafus. He left. I believe he left the party and became a convert to a religious faith. I forget which. It might have been the Catholic church, but I know he left.

Mr. Clardy. Did you say his first name was James?

Mr. Crowley. Yes, James.

Mr. Kunzig. You have testified how you became a member of the Ralph Neafus Club and your activities there at the University of Michigan.

Did you at any time then transfer to any other club of the Communist Party?

Mr. Crowley. Yes, I did. Before I left there, I transferred to the Haldane Club, which was a group for graduate students.

Mr. Kunzig. Did you request this or were you just put in automatically?

Mr. Crowley. No, I requested to leave the Neafus Club.

Mr. Kunzig. Would you tell us why you transferred to go from Neafus to Haldane?

Mr. Crowley. Well, I knew one or two people there and I wanted to be in the club with them.

Mr. Kunzig. And Haldane you say was composed of graduate students?

Mr. Crowley. Yes.

Mr. Kunzig. Did it contain teaching fellows, for example, employed as instructors?

Mr. Crowley. Yes.

Mr. Clardy. Students and teaching fellows?

Mr. Crowley. Yes.

Mr. Velde. When was it that you were transferred to Haldane, Mr. Crowley?

Mr. Crowley. I believe that was early in 1950 or the end of 1949; early in 1950, to the best of my knowledge.

Mr. Velde. That was prior to the Korean war?

Mr. Crowley. Yes.

Mr. Kunzig. Do you know, in the Haldane Club, a man by the name of Norman Cazden?

Mr. Crowley. Yes, I believe he taught at the music school.

[fol. 380] Mr. Kunzig. At the University of Michigan?

Mr. Crowley. Yes.

Mr. Kunzig. I believe that the record shows an assistant professor of music at the University of Michigan.

Mr. Crowley. Yes.

Mr. Kunzig. And you knew him to be a member of the Haldane Club and, of course, of the Communist Party?

Mr. Crowley. Yes.

Mr. Kunzig. I want to go back to some members of the Haldane Club in a few minutes.

Let us commence with your own experiences.

What sort of activities did the Haldane group engage in?

Mr. Crowley. They were chiefly of an intellectual nature discussing things. It was mainly a discussion group. There was very little of the activity of the kind that Neafus engaged in, that is, running around the campus with petitions or things like that.

Mr. Kunzig. Was Haldane even more secret than this Neafus, would you say?

Mr. Crowley. Yes, it is smaller, and it is not as open as Neafus.

Mr. Kunzig. How long did you stay a member of the party? Did you stay through your graduation in June 1950?

Mr. Crowley. Yes, then I left.

Mr. Kunzig. And you left Michigan?

Mr. Crowley. Yes, and the party.

Mr. Kunzig. And you left the party too?

Mr. Crowley. Yes.

Mr. Kunzig. Where did you go after June of 1950?

Mr. Crowley. I came to New York City and lived there ever since.

Mr. Kunzig. You did not affiliate with the Communist Party after you came back to New York?

Mr. Crowley. No, I had no connection with the party after I came back.

Mr. Kunzig. Did you attend open Communist Party rallies after you came back to New York?

Mr. Crowley. Yes, I did. I attended a party meeting, a case involving Willie McGee, sponsored by the American Labor Party, and I attended 1 or 2 rallies. I cannot recall what they were for.

Mr. Walter. Is this the movement for the relief of Willie McGee? Was that Communist-dominated?

Mr. Crowley. I don't know if it originated there, but in New York City it was led chiefly by the American Labor Party.

Mr. Walter. As I understand it, you belonged to three different Communist organizations in Ann Arbor.

Mr. Crowley. Two.

Mr. Walter. The Labor Youth League, the Neafus Club and the Haldane.

Mr. Crowley. Yes.

Mr. Walter. How many members of the Communist Party were there in these three organizations?

Mr. Crowley. The Labor League had membership of maybe 20 or 30, to my knowledge, and the Raiph Neafus Club had a membership of, a regular membership of about 10 or 15 people and others came in and left from time to time. Some people were invited into a meeting and they would leave and would not come back and some would stay [fol. 381] in a few weeks and left and the Haldane Club was quite small. I think it had about 8 or 10 people, if that.

Mr. Clardy. Wasn't there a fourth organization in town, or didn't you know about the club downtown called the Town Club?

Mr. Crowley. I knew there was a group downtown but I did not belong to that. I did not have any connection with it.

Mr. Clardy. That downtown club is composed primarily of permanent residents of Ann Arbor, is it not?

Mr. Crowley. People live there, yes.

Mr. Clardy. But you knew there was such a Communist organization?

Mr. Crowley. Yes.

Mr. Clardy. And occasionally, I presume, there was some intermingling of people from that club with the other clubs you belonged to.

Mr. Crowley. No, maybe socially but not politically.

Mr. Clardy. I did not mean Communist Party meetings, but you got together because of your common adherences to the Communist Party.

Mr. Crowley. Yes.

Mr. Clardy. That is all I have on that point.

Mr. Kunzig. Before I go into the final part of your testi-

mony, which is the names of the members in Haldane, I had you to the point where you went to New York and had no specific contact except that you did go to certain Communist front rallies. Did you ever go to any other schools?

Mr. Crowley. Yes, I enrolled at the Jefferson School.

Mr. Kunzig. The Jefferson School of Social Science?

Mr. Crowley. Yes, and I stayed there about a month or so and left it.

Mr. Kunzig. Did you work at any summer camps?

Mr. Crowley. Yes, at Camp Unity.

Mr. Clardy. It has been identified but I think we should have this further identification that the Jefferson School of Social Science was a Communist school. You do know it to be such, do you not?

Mr. Crowley. Well, it certainly taught the Communist Party line.

Mr. Clardy. Do you know any students at the school who were not members of the Communist Party?

Mr. Crowley. No, I did not know anyone who was a member there.

Mr. Walter. Where was this school?

Mr. Crowley. In New York City.

Mr. Walter. Were there any members of the faculty at the school who were not Communists?

Mr. Crowley. I do not know as to whether or not they were because I had no contact with them. I know certain of them expressed open allegiance to the Communist Party but I don't know if they were members or not. I don't know that.

Mr. Clardy. All you knew were?

Mr. Crowley. The ones I knew were, yes.

Mr. Clardy. The students you knew to be members of the Communist Party.

Mr. Crowley. I did not know them to be members.

[fol. 382] Mr. Velde. I am sorry we will be unable to finish with this witness before noon as we promised to adjourn promptly at noon, so the committee will stand in recess now until 2 o'clock this afternoon.

(Whereupon, at 12:00 noon, the hearing was recessed, to reconvene at 2 p. m., of the same day.)

AFTERNOON SESSION

(At the hour of 2:07 p. m. of the same day, the proceedings were resumed, Representatives Harold H. Velde (chairman), Gordon H. Scherer, Francis E. Walter (appearance noted in transcript), Morgan M. Moulder (appearance noted in transcript), and Clyde Doyle being present.)

Mr. Velde. The committee will be in order.

Mr. Reporter, let the record show for the purposes of the continued hearing of Mr. Crowley's testimony that I have appointed a subcommittee consisting of Mr. Scherer, Mr. Doyle, and myself as chairman, and Mr. Walter, a quorum of the subcommittee.

Proceed, Mr. Counsel.

Mr. Kunzig. Would you please take the stand, Mr. Crowley.

TESTIMONY OF FRANCIS XAVIER THOMAS CROWLEY—Resumed

Mr. Kunzig. Before the luncheon break, I was questioning you about the Haldane Club which you said you got into after you left the Ralph Neafus Club of the Communist Party.

Mr. Crowley. Yes.

Mr. Kunzig. The final questions I wish to ask you are about the other members of the Haldane Club. Would you please tell the committee the names of those people and as much identifying information as you can give about those whom you knew and remember only of your personal knowledge to be members of the Communist Party in the Haldane Club?

Mr. Crowley. All right.

There was a man named Chuck Bisdee. I forget his first name.

Mr. Kunzig. Do you have any further identification of Chuck Bisdee, age or address?

Mr. Crowley. No. He was a graduate student. I don't know his address.

Mr. Kunzig. At Michigan?

Mr. Crowley. At Michigan, yes. I believe he was in the AVC. I was a member of that myself, the American Veterans Committee.

Mr. Kunzig. But you knew Chuck Bisdee in the Communist Party, too?

Mr. Crowley. Yes.

Mr. Kunzig. Any others?

Mr. Crowley. Yes, there was another member of the group, Max Dean.

Mr. Kunzig. Can you identify him further?

Mr. Crowley. No, except he was a law student at that time.

Mr. Kunzig. I think the record at this time should show that Max Dean very recently was a fifth amendment witness in Flint, Mich., and he was at the hearings we held out there.

He was in law school?

[fol. 383] Mr. Crowley. Yes, he left and I don't know whether he came back.

Mr. Kunzig. You mean he left the university?

Mr. Crowley. That is right.

Mr. Kunzig. And you never saw him again?

Mr. Crowley. That is right. He may have come back but I don't remember.

Mr. Kunzig. Any others?

Mr. Crowley. Yes, there was Jack Geist. I believe it is spelled G-e-i-s-t. He was there while I was there. I don't know any other identification of him except that he also was a graduate student.

Mr. Kunzig. I think the record should show that Geist, after leaving the University of Michigan, became an instructor or assistant professor at the Massachusetts Institute of Technology. In June of 1952 he applied for a United States passport for the purpose of teaching at the University of Israel. You have no further information beyond that point? You knew Jack Geist to be a member of the Communist Party?

Mr. Crowley. Yes.

Mr. Kunzig. Any others?

Mr. Crowley. Yes, there is a Martin Hoffman. He was

also a student there. I knew him. He was a graduate student.

Mr. Doyle. Mr. Chairman.

Mr. Velde. Mr. Doyle.

Mr. Doyle. Mr. Chairman, I did not have the benefit of being here this morning. I was in my Armed Services Committee, and I have just noticed the witness saying in answer to counsel's question, "Do you know him to be a member of the Communist Party?"; I presume counsel laid the foundation generally laid and I think that always should be laid as to how this witness knows that these people were members of the Communist Party

Mr. Kunzig. Yes, Mr. Doyle, that has been gone into at length.

Mr. Doyle. I presume you did that this morning.

Mr. Kunzig. The witness testified that while at the University of Michigan he was in both the Ralph Neafus Club of the Communist Party and he testified about that in detail, and also the Haldane Club of the Communist Party.

Mr. Doyle. And were those closed meetings?

Mr. Kunzig. Yes, sir, closed meetings, and we specified that he name only those people he knows definitely to be members of the Communist Party.

Mr. Doyle. Thank you.

Mr. Kunzig. You mentioned Martin Hoffman. Do you have any further identification of Martin Hoffman that will help us?

Mr. Crowley. He was a graduate student and I believe he taught for a while.

Mr. Kunzig. Do you have any idea what he taught?

Mr. Crowley. Yes, psychology.

Mr. Kunzig. At Michigan?

Mr. Crowley. Yes.

Mr. Kunzig. Do you know Lloyd L. Barenblatt?

Mr. Crowley. Yes.

Mr. Kunzig. Tell us about your knowledge of Lloyd Barenblatt.

Mr. Crowley. He also was a graduate student there and I lived with him. We shared an apartment for a while.

[fol. 384] Mr. Kunzig. Then you knew him very well?

Mr. Crowley. Yes.

Mr. Kunzig. And you knew him to be a member of the Haldane Club in the Communist Party?

Mr. Crowley. Yes, just the Haldane Club.

Mr. Kunzig. The Haldane Club of the Communist Party, I should say.

Mr. Crowley. Yes, and to my knowledge he left that and he left the University of Michigan.

Mr. Kunzig. Do you know where he teaches at the present time, if he teaches?

Mr. Crowley. Yes, he is at Vassar. I would like to say, in fairness to him——

Mr. Kunzig. Any testimony you can give, we would be glad to have.

Mr. Crowley. Yes, that he expressed to me his opinion that he was pretty much of the same opinion that I was about membership in the party. I am convinced that he has left it, the Communist Party.

Mr. Kunzig. Your close knowledge of him was up to about 1950?

Mr. Crowley. Yes, I have seen him a few times since then, occasional visits.

Mr. Kunzig. Are there any others?

Mr. Crowley. Yes, there was a Mazie Gusakoff.

Mr. Kunzig. Would you spell Mazie Gusakoff?

Mr. Crowley. G-u-s-a-k-o-f-f. The Mazie I am not sure of.

Mr. Kunzig. You knew her to be a member of the Haldane Club of the Communist Party?

Mr. Crowley. Yes, for a while she attended meetings there.

Mr. Kunzig. During the period of time that you did?

Mr. Crowley. Yes.

Mr. Kunzig. How about Lester Beberfall?

Mr. Crowley. Yes, he was a member at that time.

Mr. Kunzig. Of the Haldane Club?

Mr. Crowley. Yes.

Mr. Kunzig. And you knew him to be a member definitely of the Communist Party?

Mr. Crowley. Yes, in the Haldane Club meetings.

Mr. Kunzig. Can you give us any further identification on Lester Beberfall, any further assistance?

Mr. Crowley. He was a graduate student.

Mr. Kunzig. Where?

Mr. Crowley. At the University of Michigan, and I believe he was a teaching fellow in the language department.

Mr. Kunzig. Do you know where he is at the present time?

Mr. Crowley. No, I don't.

Mr. Kunzig. When did you have any contact with him last?

Mr. Crowley. In 1950.

Mr. Kunzig. I have no further questions, Mr. Chairman.

Mr. Velde. Mr. Reporter, let the record show that I have appointed a new subcommittee consisting of Mr. Moulder, Mr. Doyle, and myself as chairman, for the purpose of continuing this hearing.

(Representative Morgan M. Moulder entered the hearing room at this point.)

(Representative Francis E. Walter left the hearing room at this point.)

[fol. 385] Mr. Kunzig. I presume you have no questions of this witness, Mr. Moulder.

Mr. Moulder. No questions.

Mr. Kunzig. Mr. Doyle.

Mr. Doyle. Yes, Mr. Chairman, and may I be privileged to ask just a few. Again I realize that I don't know what you have answered by way of questions from committee members, but I do see from the record that there were proceedings against you initiated in Congress.

Mr. Crowley. That is right.

Mr. Doyle. And your previous refusal to answer questions before the committee which the committee felt were such that your answers placed you in a legitimate contempt. Now, you are back here voluntarily?

Mr. Crowley. Yes.

Mr. Doyle. You are here without counsel?

Mr. Crowley. Yes.

Mr. Doyle. Evidently voluntarily, is that correct?

Mr. Crowley. Yes.

Mr. Doyle. In other words, you are here now helping the committee in its legal responsibility? I want to compliment you for doing that. I see you are a comparatively young man, evidently in a position of some leadership and responsibility. That places an additional responsibility on you.

But have you any suggestion to make to this committee out of your experience which might add to our effectiveness, in your judgment, in our discharge of our duties under Public Law 601?

Mr. Crowley. No, it is hard for me to add anything to the procedures you have taken. I would say that I think there are quite a few people who, like myself, were members of the Communist Party and no longer are and have some reason or other for refusing to cooperate with the committee or testify. Those people are doing a great disservice to themselves and to the country and I think that they could be reasoned with to take the approach I have taken.

I think it would be well worth the effort to try to convince these people with arguments that they are wrong by not testifying.

Mr. Doyle. Yes, but you were an American citizen when you were appearing before the committee before.

Mr. Crowley. That is the mistake I made.

Mr. Doyle. This was the same committee.

Mr. Crowley. Yes.

Mr. Doyle. And yet you pleaded your constitutional privilege.

Mr. Crowley. No, I did not, sir.

Mr. Kunzig. He just refused to testify.

Mr. Doyle. That is what placed you in legitimate contempt.

Mr. Crowley. Yes.

Mr. Doyle. Have you any suggestions to this committee as to how we could perhaps induce more young men and women or older citizens to, as you say, help the committee in helping to discharge its official duties? What can we do? We have given an invitation over the radio and through the press and every other way.

Mr. Crowley. One way might be if a witness is willing to

cooperate, to safeguard them in some way, provided they do not take the course I took and refuse to testify, to safeguard them in some way from publicity or from harmful [fol. 386] social repercussions. That is an unfortunate thing.

Mr. Doyle. Yes, but you are going to suffer.

Mr. Crowley. Yes, I learned myself that I took the wrong course.

Mr. Doyle. Now, why do you place yourself in perhaps a place where there will be repercussions? Why do you do it now and you did not do it before?

Mr. Crowley. Well, I have a sense of responsibility now that I did not have then, and I have something to live for other than just myself. I have a wife and I am going to have a child. When I appeared before the committee the last time I had neither of those and I am not going to punish them for something I did, something I do not believe in.

Mr. Doyle. In other words, before you were following the Communist Party line and refusing to cooperate with the committee?

Mr. Crowley. No, I was not following it. I was just acting on my own impulse. I had not yet any contact with the Communist Party since 1950 when I appeared the last time. It was my own decision to do it that way. I was wrong.

Mr. Doyle. Thank you very much.

Mr. Kunzig. No further questions, Mr. Chairman.

Mr. Velde. Mr. Moulder, do you have any questions?

Mr. Moulder. I was not here during the earlier part of your testimony, but did you explain to the committee what influence persuaded you to go into the party?

Mr. Crowley. Yes, I did. I said that I was searching for some kind of a faith or ideology to hang onto, some spiritual thing, and I thought that was it. It served for a whole. It took the place of a faith that I had lost.

I was brought up as a Catholic and it was some kind of spiritual help to me, a support, a crutch to lean on while I was in it. And then I saw what it was and I lost that and I have gone back to my original faith. But I think my reason was because I was at odd ends with myself and the world and I did not know how to solve my own personal problems.

Mr. Moulder. At that time did you consider yourself a party to the conspiracy of a world revolutionary movement to overthrow our form of government?

Mr. Crowley. I do not think I ever thought of it that way, that I was actively, you know, engaged in that kind of thing. I am convinced I never thought of it in the terms of a conspiracy. Maybe I did not realize it or maybe I was naive about it, but I do not think I ever felt like that.

Mr. Doyle. May I ask one more question, Mr. Chairman?

Mr. Velde. Mr. Doyle.

Mr. Doyle. Do I understand that for a period of perhaps 2 or 3 years you tried to substitute communism for the Christian faith and found it was no substitute?

Mr. Crowley. That is right, that sums it up.

Mr. Doyle. Thank you.

Mr. Velde. I have just a few questions. Mr. Crowley. I do not mean to be castigating you by any stretch of the imagination. On the other hand, I do want to congratulate you on taking the stand you have taken today, but there is something that worries me about members of the Com- [fol. 387] munist Party who remain in membership after 1948 and 1949. There has been quite a little information given out by legitimate Government officials concerning the nature of the Communist Party after that time. I am wondering whether you or any of your fellow members of the Communist Party in 1950 ever considered the statements made by our Supreme Court and this Un-American Activities Committee and other committees of Congress concerning the nature of the Communist conspiracy.

Did you ever stop to consider that?

Mr. Crowley. Yes, I followed the Smith trials, the original Smith trials of the Communist Party leaders and up to about the time of the Korean war or shortly after it began I did not think that the Communist Party was guilty in the sense that the Smith Act had indicted it to be, or the leaders of the Communist Party.

Mr. Velde. You were in the party how long after the Korean war started?

Mr. Crowley. I was in the party until about August 1950, about July of 1950. The Korean war started in June.

Mr. Velde. June 30, wasn't it, or about the 20th of June.

Well, now, Mr. Crowley, at the time that we sent troops to South Korea to defend against the onslaught of North Koreans, were you propagandized into believing that the attack was by the South Koreans?

Mr. Crowley. I was at that time.

Mr. Velde. Did you feel that it was?

Mr. Crowley. I did when the fighting first started, but I changed my mind about that, as I think a lot of people did.

Mr. Velde. That is when you were in the Haldane Club?

Mr. Crowley. Yes.

Mr. Velde. And you were a postgraduate student and so were the others, mostly postgraduate students?

Mr. Crowley. Yes.

Mr. Velde. Did they ever discuss this topic in closed meetings of the Haldane Club, that is, who is the aggressor in the Korean war?

Mr. Crowley. Yes, the opinion was that South Korea was the aggressor.

Mr. Velde. How did they arrive at that conclusion?

Mr. Crowley. I don't know. It was just stated that South Korea invaded North Korea.

Mr. Velde. Did it come from higher sources in the Communist Party; do you know?

Mr. Crowley. Well, it must have, because I do not think anyone there would have; you know, devised that explanation for the war.

Mr. Velde. Do you recall any of the other matters which were discussed by your group in the meetings at the Haldane Club particularly?

Mr. Crowley. Let me see.

Mr. Velde. Did you study Marxism?

Mr. Crowley. Yes, pamphlets on Marxism. I forget which ones, but the discussion centered around, as I recall, literature and cultures, on the subjects of arts, the relation to communism of Marxism, what is the function of the artist in that respect.

The Haldane Club was chiefly an intellectual group, discussion group.

[fol. 388] Mr. Velde. That was only, as you testified be-

fore, about 8 or 10 members of the postgraduate group at the University of Michigan?

Mr. Crowley. Yes.

Mr. Velde. Do you have any idea how many postgraduates were in the University of Michigan at that time?

Mr. Crowley. The student body was about 20,000 altogether, and I think there must have been about at least 15,000 in the college, so I guess the graduate students would be 12,000 to 15,000, I think.

Mr. Velde. Of course, that is a very minute percentage considering the whole population. However, we have seen how small percentages of dyed-in-the-wool Communist Party members can take over large majorities in other countries behind the Iron Curtain.

You say, however, you did not have any idea you were engaged in a conspiracy to overthrow the American constitutional form of government?

Mr. Crowley. No.

Mr. Velde. Do you feel that your colleagues had that idea, that they were engaged in a conspiracy?

Mr. Crowley. I am sure that the ones I knew did not have that notion. They were people who were mostly the intellectual type of people who were getting their feet wet on something or other. Some of them may have had that in their mind, but I never heard it expressed in the terms of overthrowing anything. It was never expressed to me that way.

Mr. Velde. Could we sum up your reasons for going into the Communist Party in the first place and your reasons for getting out something like this; that you were personally disturbed over the social situation in the United States and that you had personal problems of your own that you thought you could solve by getting into the Communist Party?

Mr. Crowley. Yes.

Mr. Velde. And that is the reason you got in?

And now, as far as getting out of the Communist Party, did you ever submit a formal resignation?

Mr. Crowley. No, when I left the Haldane Club, which was in July of 1950, and I left Ann Arbor at the same time,

in August, after I graduated, and I never got a transfer or anything of that sort. I just stopped.

Mr. Velde. You just stopped attending meetings of all kinds in 1950 and had nothing further to do with the Communist Party whatsoever?

Mr. Crowley. That is right.

Mr. Velde. And your reasons for getting out of the party or for being disinterested in further attendance in meetings in the Communist Party was that you felt it had not solved your personal problems?

Mr. Crowley. It had not solved my personal problems and it had not done me—in fact, it had done me more harm than good because it had given me a false picture of the world, a false picture of what is right and wrong. From the way I am living, I am certainly not living according to the way a Communist might be expected to live. And I feel I am right now, so I must have been wrong then.

[fol. 389] Mr. Velde. I am glad to hear you say that. You definitely feel now that the Communist Party is a conspiracy and not a political party whatsoever?

Mr. Crowley. That is right.

Mr. Velde. May I say that we certainly do appreciate the information you have given here voluntarily to the committee.

As I mentioned before, the committee would not be authorized as a body to ask for immunity from prosecution for you. However, I do feel that many of the members of the committee, probably a big majority, feel that you have performed a service to your country by giving us the information that you have and that would possibly be a good reason why the Attorney General should drop prosecution in your particular case for contempt.

Does any other member have anything further?

Do you have anything further, Mr. Counsel?

Mr. Kunzig. Nothing further.

Mr. Velde. If not, the witness is excused with the committee's thanks.

Call your next witness.

Mr. Kunzig. Robert H. Silk.

Mr. Velde. Will you raise your right hand?

Mr. Silk. Mr. Chairman, before I take the oath, I wish to raise an objection to the jurisdiction of this committee to administer the oath.

Mr. Velde. You have no right to raise any objection to the jurisdiction of this committee.

Does the witness refuse to take the oath?

Mr. Silk. I will take the oath, under protest.

Mr. Velde. In the testimony you are about to give before this subcommittee, do you solemnly swear you will tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Silk. I do.

Mr. Velde. Mr. Reporter, for the purposes of this hearing, let the record show that I have appointed as a subcommittee Mr. Walter, Mr. Moulder, Mr. Doyle, and myself as chairman, four members are present as a quorum.

Proceed, Mr. Counsel.

* * * * * * *

[fol. 390] TESTIMONY OF LLOYD BARENBLATT, ACCOMPANIED BY HIS COUNSEL, PHILIP WITTENBERG

Mr. Kunzig. Would you state your full name, please, sir?

Mr. Barenblatt. My name is Lloyd Barenblatt, B-a-r-e-n-b-l-a-t-t.

Mr. Kunzig. What is your present address, sir?

Mr. Barenblatt. My present address is Route No. 2, Pleasant Valley, N. Y.

Mr. Kunzig. Mr. Barenblatt, I see that you are accompanied by counsel.

Would counsel please state his name and office address for the record.

Mr. Wittenberg. Philip Wittenberg, W-i-t-t-e-n-b-e-r-g, 70 West 40th Street, New York City, N. Y.

Mr. Kunzig. Thank you, sir.

[fol. 391] Mr. Barenblatt, will you give the committee a brief résumé of your educational background?

Mr. Barenblatt. Yes, sir. I suppose they want me to begin at the high school level?

Mr. Kunzig. Fine.

Mr. Barenblatt. I attended Clinton High School in New York City.

Mr. Kunzig. When did you graduate?

Mr. Barenblatt. January 1940, as I recall. I then enrolled as a student at the College of the City of New York; that was in February 1940.

I left the College of the City of New York for one semester. I enrolled in the United States Maritime Service. When there I was struck with spinal meningitis. I left the Maritime Service to recuperate, and went back to school while I was convalescing. My classification was 4-F. However, as soon as I felt better I appeared for voluntary induction into the United States Army for aviation cadet training.

Mr. Kunzig. What is your present age, Mr. Barenblatt?

Mr. Barenblatt. 31, sir.

Mr. Kunzig. Have you completed your formal education?

Mr. Barenblatt. Well, I still intend to complete the requirements for a doctor of philosophy degree. I have a bachelor's degree from City College.

I am sorry. I didn't finish my educational background.

Mr. Kunzig. Go right ahead.

Mr. Barenblatt. It was an oversight on my part. Excuse me.

Mr. Kunzig. All right.

Mr. Barenblatt. I attended the University of Iowa when I was discharged from the Army. I spent a year and a half, I believe, at the University of Iowa.

In the summer of 1947 I enrolled in the University of Michigan in the graduate school of studies for the purpose of working for the Ph. D. in social psychology.

Mr. Kunzig. What period of time exactly were you at the University of Michigan?

Mr. Barenblatt. I was in residence at the University of Michigan from the summer of 1947 until the spring semester of 1950.

Mr. Kunzig. Did you know Francis Crowley at that time, who testified here this morning?

Mr. Barenblatt. Sir, I would like here to state my objections to the power and jurisdiction of this committee to

inquire into my political beliefs, my religious beliefs, and any other personal and private affairs or my——

Mr. Kunzig. Just a minute. I asked you a very simple question, which I don't think has anything to do with religious beliefs, or all the other beliefs you mentioned.

Do you know Francis Crowley?

Mr. Barenblatt. Yes.

Mr. Kunzig. Yo do know him?

Mr. Kunzig. You can hold that for a minute. I will get around to it in a minute.

Now, did you hear Crowley testify this morning?

Mr. Barenblatt. Yes, sir.

[fol. 392] Mr. Kunzig. You heard him identify Lloyd Barenblatt as a person he knew to have been a member of the Communist Party?

Mr. Barenblatt. I believe I heard him to say, I believe his words were more in the way of saying that I was a member of the Haldane Club, I don't recall exactly his saying that I was a member of the Communist Party. However, I suppose the record will show that.

Mr. Kunzig. The record shows the Haldane Club meant the Haldane Club of the Communist Party.

Mr. Velde. And I think that was made clear in his previous testimony.

Mr. Barenblatt. If the record so states, I don't remember, sir.

Mr. Kunzig. It does.

Now, were you a member of the Haldane Club of the Communist Party at Michigan?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. At this point I respectfully would like to object to the questions——

Mr. Doyle. Mr. Chairman——

Mr. Velde. All right. You have the floor.

Mr. Doyle. Before the young man takes the time of the committee to read that, whatever it is, may I just urge you to think even more seriously than you have about whatever position you are going to take before this committee.

I know you have competent counsel, and of course you should rely on him, possibly, but I anticipate you might be preparing yourself to take the position opposite to that of cooperation with the committee.

I am in no position to give you legal advice, but I know from the record that you are an instructor in a certain very distinguished college, by reputation, at least, and wouldn't it be a magnificent thing if you could take the position that if you ever were a member of the Communist Party, that you say so frankly and clean up and get out of that embarrassing situation and then start from there? Wouldn't that do you and the country a lot more good today——

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Doyle. Or put it on this basis. Wouldn't it do your country a lot more good?

Mr. Barenblatt. I appreciate your concern, sir.

Mr. Doyle. I am opening the door for you, sir.

Mr. Barenblatt. I understand, sir. However, I feel that this statement of objection which I am about to read might explain some things to the members of the committee.

Mr. Doyle. Well, as a young man you can never say now that we haven't opened the door deliberately, and maybe I am embarrassed before the committee at this point——

Mr. Velde. You certainly have given him every opportunity, Mr. Doyle, and I think he has had every opportunity before to come clean.

Let me say this about this statement you are about to read.

You are familiar with the rules of this committee——

Mr. Barenblatt. I believe so, sir.

Mr. Velde. The committee made them some time ago. And are you familiar with rule 9 concerning statements by witnesses?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

[fol. 393] Mr. Velde. If not, let me read them again. [Reading:]

Any witness desiring to make a prepared or written statement for the record of the proceedings in executive or public sessions shall file a copy of such statement with the counsel of the committee within a reasonable period of time in advance of the hearing at which the statement is to presented.

All such statements so received which are relevant and germane to the subject of the investigation may, upon approval, at the conclusion of the testimony of the witness, by a majority vote of the committee or subcommittee members present, be inserted in the official transcript of the proceedings.

It is my feeling, and I am sure the other members agree, that your submitting the statement at the present time is not a reasonable time prior to the hearing. Now——

Mr. Barenblatt. May I say this——

Mr. Velde. Now, let me ask you one question. If you answer in the affirmative or in the negative, either one, then I believe that the committee would be very willing to let you read this statement.

Are you now a member of the Communist Party?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. Sir, this is an objection to the questions asked by the committee.

Mr. Velde. I realize——

Mr. Barenblatt. It is not a preliminary statement——

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. And I ask for leave to read the objections.

Mr. Velde. It is assumed by the committee to be a preliminary statement.

Now, will you answer the question if you are a member of the Communist Party at the present time?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. I object on the following grounds——

Mr. Kunzig. Mr. Chairman, he is about to read an 11-page legal brief. This is obviously a delaying tactic.

Mr. Velde. I am not going to let him do it. The committee will take the statement up in executive session and determine if it should be placed in the record.

Mr. Barenblatt. But, sir, I believe I have a right to state my objections to the question. That is all I am doing.

Mr. Velde. You will be given that right if you will answer the question in the affirmative or the negative.

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. What is the question?

Mr. Velde. Whether you are a member of the Communist Party at the present time.

Mr. Barenblatt. May I confer with counsel?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. I object to this on the grounds that I will state and that I have handed to the committee.

Mr. Walter. Never mind objecting. Do you decline to answer?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. I do not decline to answer. I am objecting to the question.

Mr. Velde. Then will you answer?

Mr. Barenblatt. I am objecting to the question, sir. I wish that I might make that clear. I don't see what the [fol. 394] trouble is about stating my grounds for objection. I notice that the other witnesses have been able to do so, and I wish to claim the privilege——

Mr. Kunzig. The other witnesses didn't decline to answer. Do you decline to answer?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. I decline to answer——

Mr. Velde. Now, Mr. Witness, perhaps you are not familiar with the procedure before a congressional committee. It is entirely different than before a court of law. This is not a court of law. Your privileges are set up in the rules of the committee, and I assume you have a copy of the rules of the committee.

Mr. Wittenberg. I have, sir.

Mr. Velde. And we cannot have counsel putting the answers into the witness' mouth. You have a right to confer with your witness as far as his constitutional rights are concerned, but you have spoken loud enough to show that you are trying to get the witness to read this statement. Obviously——

Mr. Wittenberg. Sir, that would be my advice to him.

Mr. Kunzig. Now, he had started to say, Mr. Chairman, he declines to answer the question as to whether he is now a member of the Communist Party.

Now, do you so decline on the grounds of the fifth amendment, among other things, in this statement?

Mr. Barenblatt. I wish to confer with my counsel, please.

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. I do not invoke the fifth amendment in declining to answer. I decline to answer on the grounds stated in my objections as presented to the members of this committee, which you have not allowed me to read.

Mr. Walter. Now, may I inform you that you haven't the right to decline to answer by virtue of any decision of the court. It is because of the Constitution.

Now, do you decline to answer because of the constitutional provision?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. May I consult with counsel, sir.

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. I am declining to answer on constitutional grounds as stated in my objections.

Mr. Velde. But you do not include the fifth amendment in your reasons in declining; is that right?

Mr. Barenblatt. You are correct, sir.

Mr. Kunzig. Are you stating in this document which you have just handed to us, and which we have had no time to look at at all, that the fifth amendment is not included?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. Not included in my list of objections.

Mr. Kunzig. So you are declining to answer the question as to whether you are now a member of the Communist Party, and you are specifically not giving the fifth amendment as a reason for declining?

Mr. Barenblatt. That is correct, sir.

Mr. Kunzig. All right. Now, Mr. Chairman, I respectfully request that the witness be directed to answer the question: Are you now a member of the Communist Party?

[fol. 395] Mr. Velde. The witness is directed by the Chair to answer that question.

Mr. Barenblatt. I would like to consult with counsel, sir.

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. I decline to answer on the following grounds:

I, Lloyd Barenblatt, having been subpenaed before the Committee on Un-American Activities, by subpena dated the 28th day of May 1954——

Mr. Velde. Now, you have gone far enough with the statement. You are trying to read it into the record.

Mr. Barenblatt. May I continue with my grounds——

Mr. Velde. I say the statement is accepted by the committee and will be considered for insertion in the record.

Now, proceed with your answer.

Mr. Barenblatt. This is not a statement, not a preliminary statement. This is the grounds——

Mr. Velde. Whatever you want to call it.

Mr. Barenblatt. I would like to get it into the record.

Mr. Velde. Whatever you want to call this, if it is a state-

ment of objections, it will be considered by the committee at a future time for insertion into the record.

Now, will you answer the question?

Mr. Barenblatt. May I consult with counsel?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. I am objecting on these grounds, and I will not answer any questions about which the list of objections is read: my political beliefs; my religious beliefs; any other personal and private affairs; my associational activities.

I will not answer any of those questions on the grounds of my objections in this statement which I again respectfully request that I be able to read at this point to get into the record the objections so that we can proceed from that point.

Mr. Walter. We will spare you a lot of time.

I have read this, so a member of the committee is well acquainted with what is in it.

Now, let's proceed.

Mr. Velde. I want to know this from the witness.

In refusing to answer this question upon direction by the Chair, you are not relying upon the fifth amendment to the Constitution?

Mr. Barenblatt. You are correct, sir.

Mr. Velde. All right. Proceed.

Mr. Kunzig. And at no time in this interrogation of you today, at no time in your appearance before the House Committee on Un-American Activities, are you relying on the fifth amendment?

Mr. Barenblatt. I can't make any statement about what might occur in the future, sir. All I can say at this point, I have no anticipation now of doing so.

Mr. Doyle. At least today you are not relying on it, at this time?

Mr. Barenblatt. All I can talk about is the present——

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Kunzig. Mr. Chairman, I respectfully request that since the witness has asked to be able to put this document

into the record as his reason for not answering the question [fol. 396] that he has been asked, which is, Are you now a member of the Communist Party, which he was directed to answer and which he refused again to answer, I respectfully request that this document be included in the record as his reason for not answering.

Mr. Velde. Yes. I have not had an opportunity to read the full statement, but I am going to take the word of my colleague from Pennsylvania and my colleague from California, and without objection, at this point the objections or statement, or whatever the witness wants to call it, will be inserted into the record as Barenblatt Exhibit No. 1.

(The document headed "Objection to Jurisdiction of the Committee on Un-American Activities and to Questions Propounded by It," was received in evidence as Barenblatt Exhibit No. 1.)

BARENBLATT EXHIBIT NO. 1

OBJECTION TO JURISDICTION OF THE COMMITTEE ON UN-AMERICAN ACTIVITIES AND TO QUESTIONS PROPOUNDED BY IT

1. I, Lloyd Barenblatt, having been subpenaed before the Committee on Un-American Activities, by subpena dated the 28th day of May 1954, returnable on the 28th day of June 1954, hereby respectfully object to the power and jurisdiction of this committee to inquire into——

(*a*) My political beliefs;

(*b*) My religious beliefs;

(*c*) Any other personal and private affairs;

(*d*) My associational activities.

2. I am a private citizen engaged in work in the fields of education and research, and in writing and speaking in connection therewith. I hold no office of public honor or trust. I am not employed by any governmental department. I am not under salary or grant from any governmental department.

3. The grounds of my objection are as follows:

A. Any investigation into my political beliefs, my religious beliefs, any other personal and private affairs, and my associational activities, is an inquiry into personal and private affairs which is beyond the powers of this committee. I rely not upon my own opinion but upon statements contained in the opinions of the Supreme Court of the United States. Among others, in *United States* v. *Rumely* (345 U. S. 41, 58), the Supreme Court of the United States said in a concurring opinion by Mr. Justice Douglas: "The power of investigation is also limited. Inquiry into personal and private affairs is precluded."

In *McGrain* v. *Daugherty* (273 U. S. 135), the Court said: "Neither House is invested with 'general' power to inquire into private affairs and to compel disclosures."

And in *Kilbourn* v. *Thompson* (103 U. S. 168), the Court said:

> "Neither the Senate nor the House of Representatives 'possesses the general power of making inquiry into the private affairs of the citizens'."

In *West Virginia State Board of Education* v. *Barnette* (319 U. S. 624), the Court, in an opinion by Mr. Justice Jackson said:

> "If there is any fixed star in our constitutional constellation it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion or force citizens to confess by word or act their faith therein."

It follows therefore that this committee is without power to examine into my political, religious, associational and private affairs.

B. The right to refuse to answer to any official, or indeed to anyone, with regard to one's personal affairs is a valuable right in a democracy which ought not lightly be ceded, or indeed ought ever be impinged upon by any public official. The Congress of the United States is composed of elected officials who have no power to intrude into the private affairs of American citizens. They cannot by resolu-

tion increase their constitutional authority. As was said by the Supreme Court of the United States in *Jones* v. *Securities & Exchange Commission* (298 U. S. 1):

> [fol. 397] "The citizen when interrogated about his private affairs has a right before answering to know why the inquiry is made; and if the purpose disclosed is not a legitimate one, he may not be compelled to answer."

And again in *McGrain* v. *Daugherty* (273 U. S. 135): "That a witness rightfully may refuse to answer where the bounds of the power are exceeded."

It was said by Mr. Justice Frankfurter in *United States* v. *United Mine Workers of America* (330 U. S. 258, 307):

> "The historic phrase 'government of laws and not of men' epitomizes the distinguishing character of our political society." * * * "'A government of laws and not of men' was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of Government may be challenged by an appeal to law, as finally pronounced by this Court."

And again in *Youngstown Sheet & Tube Co.* v. *Sawyer* (343 U. S. 579):

> "The accretion of dangerous power does not come in a day. It does come, however slowly, from the generative force of unchecked disregard of the restrictions that fence in even the most disinterested assertions of authority."

Within the meaning of these decisions I regard it as one of the duties of a citizen of the United States to be vigilant against the accretion of dangerous power. I call to the attention of this Committee the opinion of Mr. Justice Douglas in *Youngstown Sheet & Tube Co.* v. *Sawyer* (343 U. S. 579), that even the cold war and the emergencies said to have been created thereby "did not create power."

C. Under the first amendment to the Constitution the power of investigation by Congress in matters involving

freedom of speech and freedom of the press is limited. There can be no investigation except for the purpose of legislation. As was said by Mr. Justice Van Devanter in *McGrain* v. *Daughterty* (273 U. S. 135, 178):

> "The only legitimate object the Senate could have in ordering the investigation was to aid it in legislating."

The Congress of the United States has no constitutional right to legislate with regard to prior restraint on utterance in either form; and as to any books already written or statements made, no ex post facto law can be passed determining innocence or criminality, therefore any investigations into my writings or speech or communications is beyond the power of this committee. As was said by Mr. Justice Douglas in *United States* v. *Rumely* (345 U. S. 41, 58):

> "Through the harassment of hearings, investigations, reports, and subpenas Government will hold a club over speech and over the press. Congress could not do this by law. The power of investigation is also limited. Inquiry into personal and private affairs is precluded."

D. Under our Constitution our Government is a government of limited powers, tripartite in form, consisting of the legislative, the judicial, and the executive. This separation is fundamental to the preservation of the rights of the people in order that no one department may, through its power, rise to become a despotic arbiter. This committee through this investigation into my political, associational, religious, and private affairs trespassed upon the judicial department and has caused a lack of balance of power which constitutes a threat to my liberty as an American citizen and is an unconstitutional usurpation. This usurpation has reached the point where the Supreme Court of the United States in *United States* v. *Rumely* (345 U. S. 41, 44), said:

> "'And so, we would have to be that "blind" court, against which Mr. Chief Justice Taft admonished in a famous passage, that does not see what all others

can see and understand' not to know that there is wide concern, both in and out of Congress, over some aspects of the exercise of the Congressional power of investigation."

No place is that usurpation better seen than in the trespassing by the legislature upon the judiciary. As was said in *Lichter* v. *United States* (334 U. S. 742, 779):

> "In peace or in war it is essential that the constitution be scrupulously obeyed, and particularly that the respective branches of the Government keep within the powers assigned to each by the Constitution."

And again in *Myers* v. *United States* (272 U. S. 52, 116), by Mr. Justice Taft:

> "If there is a principle in our Constitution, indeed in any free Constitution more sacred than another, it is that which separates the legislative, executive, and judicial powers."

And again by Mr. Justice Brandeis in *Myers* v. *United States* (272 U. S. 52, 293, 71 L. ed. 160):

> "The doctrine of the separation of powers was adopted by the Convention of 1787 not to promote efficiency but to preclude the exercise of arbitrary [fol. 398] power. The purpose was not to fight friction but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy."

And again in *Kilbourn* v. *Thompson* (103 U. S. 168):

> "It is believed to be one of the chief merits of the American system of written constitutional law that all the powers entrusted to governments, whether State or National, are divided into the three grand departments: the executive, the legislative, and the judicial. * * * It is also essential to the successful working of this system that the persons entrusted with power in any one of these branches shall not be permitted to

encroach upon the powers confided to the others but that each shall by the law of its creation be limited to the exercise of the power appropriate to its own department and no other."

Not only did the founders of our Republic separate the departments of government, but they also limited the powers of each of those departments. It is a simple statement known to every American schoolchild that our Government consists of separate departments, that the powers of each of those departments is limited, and that all rights not granted to the Government are reserved to the people.

To be specific, Congress has the specific power to legislate granted to it by the Constitution. It has an implied power to investigate which, however, can be no broader than the power to legislate. In the absence of proposed legislation there can be no investigation, for all powers not expressly granted or necessarily implied are reserved to the people. Neither of the tripartite departments of our Government can claim any residual power as a basis for acting. In order that there might be no doubt about the limitations of power and the wish not to grant residual power the citizens of the several States insisted on the insertion in the Bill of Rights of amendment 9:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

They reinforced amendment 9 by amendment 10:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This Congress and the committees appointed by it can enjoy only the powers expressly granted in the Constitution or necessarily implied therefrom. Congressmen or committeemen thereof as officials of the Government do not have, and cannot arrogate to themselves, a power to intrude into the private affairs of the people of the United

States, a power which the people reserve to themselves. The arrogation of power may be curtailed either by an appeal to the courts, or what is to be more hoped for, by the self-discipline of those entrusted with authority. The possibility of petty tyranny is ever present in a democracy unless the body of officialdom is wise and knows that self-limitation is essential to the success of our scheme of government. As Mr. Justice Frankfurter said in *Youngstown Sheet & Tube Co.* v. *Sawyer* (343 U. S. 579):

> "A constitutional democracy like ours is perhaps the most difficult of man's social arrangements to manage successfully. Our scheme of society is more dependent than any other form of government on knowledge and wisdom and self-discipline for the achievement of its aims."

But when such self-discipline is not apparent in the actions of any governing body then it becomes the duty of the citizen to challenge that act by an appeal to law. It is that duty which I here feel obliged to maintain. (See *United States* v. *United Mine Workers of America* (330 U. S. 258).)

This committee, by compelling me to leave my ordinary pursuits and to attend before it for the purpose of testifying with regard to my political beliefs, my religious beliefs, other personal and private affairs, and my associational activities, is acting as a judicial indicting and accusatory power. It is intruding into the judicial sphere and is following a practice which closely parallels the practices which resulted in bills of attainder being prohibited by our Constitution (art. I, sec. 10).

The present practices of this committee fall within the condemnation and prohibition of that section.

The Supreme Court said, in *United States* v. *Lovett* (328 U. S. 303, 317):

> "Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty, or property of particular named persons because the Legislature thinks them guilty of conduct which deserves punishment. They intended to

safeguard the people of this country from punishment without trial by duly constituted courts. * * *

[fol. 399] "And even the courts to which this important function was entrusted were commanded to stay their hands until and unless certain tested safeguards were observed. An accused in court must be tried by an impartial jury, has a right to be represented by counsel, he must be clearly informed of the charge against him, the law which he is charged with violating must have been passed before he committed the act charged, he must be confronted by the witnesses against him, he must not be compelled to incriminate himself. * * *

"Our ancestors had ample reason to know that legislative trials and punishments were too dangerous to liberty to exist in the nation of free men they envisioned. And so they proscribed bills of attainder."

But a bill of attainder need not be the specific bill of attainder referred to in the Constitution. It may be any legislative act taken in connection with known punishments which together constitute a deprivation of civil rights. So to ask me whether I am or have been a member of the Communist Party may have dire consequences. I might wish to defend myself by taking recourse to the protection of the provisions contained in the Bill of Rights or challenge the pertinency of the question to the investigation. Should I invoke the protection of the Bill of Rights and the Constitution I thereby place my livelihood and my position in society in a position of jeopardy. Many of our States, municipalities, educational institutions, the Federal Government itself, and even private employers, have adopted rules of exclusion from employment for persons taking recourse in the Bill of Rights or the Constitution.

The Supreme Court of the United States took cognizance of this condition in 1950, a time when it had not yet reached the full flavor of today. For in 1950, Mr. Justice Black concurring in *Joint Anti-Fascist Refugee Com.* v. *McGrath* (341 U. S. 123, 144, 145), said: "In this day when prejudice, hate, and fear are constantly invoked to justify irresponsible smears and persecution of persons even faintly sus-

pected of entertaining unpopular views, it may be futile to suggest that the cause of internal security would be fostered, not hurt, by faithful adherence to our constitutional guaranties of individual liberty. Nevertheless, since prejudice manifests itself in much the same way in every age and country and since what has happened before can happen again, it surely should not be amiss to call attention to what has occurred when dominant governmental groups have been left free to give uncontrolled rein to their prejudices against unorthodox minorities. * * * Memories of such events were fresh in the minds of the founders when they forbade the use of the bill of attainder."

And he said further: "Moreover, officially prepared and proclaimed governmental blacklists possess almost every quality of bills of attainder, the use of which was from the beginning forbidden to both national and State governments. (United States Constitution, article I, sections 9, 10.)"

As was said in *United States* v. *Lovett* (328 U. S. 303, 324) cited by Mr. Justice Black in the preceding opinion:

> "Figuratively speaking all discomforting actions may be deemed punishment because it deprives of what otherwise would be enjoyed.
>
> "The deprivation of any rights, civil or political previously enjoyed, may be punishment, the circumstances attending and the causes of the deprivation determining this fact."

Upon all the grounds aforesaid I object not only to the jurisdiction of this committee, but also to the questions propounded by it. This objection is made upon the advice of counsel as to my rights as provided for in rule VII of the rules of procedure of this committee.

Counsel who appear for me are Philip Wittenberg and Irving Like of 70 West 40th Street, Borough of Manhattan, New York City.

Mr. Velde. Hereafter when you decline to answer a question, you may make your declination, in order to save time, on the basis of the statement of objections previously made.

Mr. Kunzig. I think in order that the record may be

clear, Mr. Chairman, the record should also show that the committee is bending over backward in fairness to this witness in spite of his violation of rule 9 of the committee.

He has been in possession of a copy of the rules as to how statements should be submitted and how a lengthy thing such as this statement should be submitted for a period, roughly, of a month.

[fol. 400] Mr. Barenblatt. May I say at this point, this is not my statement. It is my setting forth of my objections as the question is asked me before the committee.

I wish to comply with all the rules of this committee, and I respect them as set forth in this hearing. I certainly don't look upon myself as wilfully violating any rules, and I want to make it clear that this is not a preliminary statement before the committee, but it is the statement of my objections to the kinds of questions you are asking.

Mr. Velde. Now, in order to clarify the point made by counsel, Mr. Barenblatt, you did receive a copy of the rules at the time you were served with a subpena by this committee?

Mr. Barenblatt. Yes, sir.

Mr. Velde. And when were you served with your subpena?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. It is about a month ago, sir; I don't remember the exact date.

Mr. Velde. Mark that "Barenblatt Exhibit No. 2."

Without objection the subpena and return thereon will be introduced into evidence at this point.

(The subpena and return thereon above referred to, marked "Barenblatt Exhibit No. 2" for identification, was received in evidence as Barenblatt exhibit No. 2.)[1]

Mr. Velde. Now, at what time did you first give a copy of your objections, as you call them, to this committee or any member of its staff.

Mr. Barenblatt. May I consult?

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[1] Retained in committee files.

Mr. Velde. Yes.

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. In response to the question and objection thereto, I present the committee with these objections.

Mr. Velde. When did you present them for the first time?

Mr. Barenblatt. Well, I presented them for the record when the question was asked me regarding my——

Mr. Velde. Acquaintanceship——

Mr. Barenblatt. Private political association.

Mr. Velde. I didn't get that last answer—sorry.

Mr. Barenblatt. I believe it was when a question was asked me about my political and private associations. That is when I intended to invoke the objections as here stated.

Mr. Velde. But that was in the course of these hearings today?

Mr. Barenblatt. Yes, sir.

Mr. Velde. Do you feel that that was a reasonable time to submit it in advance to the committee or a member of its staff?

Mr. Barenblatt. Well, sir, I believe that the proper time to enter objections is when you object to a question being asked, so under those considerations I really think so, sir.

Mr. Velde. In other words, you did what you believed was right in spite of what the committee rules were, is that correct?

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Barenblatt. No, sir; I wouldn't put that interpretation on it at all.

[fol. 401] I believed what I did was right and I had no idea of what the committee's interpretation of this was at the time I submitted the statement.

Mr. Kunzig. Have you ever been a member of the Communist Party?

Mr. Barenblatt. I must object to that question on the grounds previously put into the record.

Mr. Kunzig. You may just say the same grounds and we

will understand it to mean this document which is Barenblatt Exhibit No. 1.

Mr. Barenblatt. Yes, sir; exhibit 1, sir.

Mr. Velde. All right. Now, Mr. Witness, you are directed to answer that question.

Mr. Barenblatt. I decline to answer on the basis of the grounds stated in exhibit 1.

Mr. Kunzig. Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?

Mr. Barenblatt. I must decline to answer that question, sir, on the grounds as stated in my objections in exhibit 1.

Mr. Kunzig. Now, you don't have to do it. You said you must. Do you decline to answer?

Mr. Barenblatt. I do, sir.

Mr. Kunzig. I respectfully ask that he be directed on each of these questions, Mr. Chairman.

Mr. Velde. Yes. You are directed to answer the question propounded by counsel.

Mr. Barenblatt. The same question; I object on the grounds as previously stated in the exhibit.

Mr. Kunzig. Do you decline to answer?

Mr. Barenblatt. I decline to answer.

Mr. Kunzig. Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?

Mr. Barenblatt. I decline to answer on the grounds as previously stated.

Mr. Velde. You are directed to answer that question, Mr. Witness.

Mr. Barenblatt. Sir, I respectfully decline to answer on the basis of the grounds as previously stated.

Mr. Kunzig. Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions?

Mr. Barenblatt. I again decline to answer on the basis of the objections made in exhibit 1.

Mr. Velde. You are again directed to answer that question, Mr. Barenblatt.

Mr. Barenblatt. I must decline to answer these questions, sir, on the basis of the grounds as previously stated.

Mr. Kunzig. Let the record show, of course, that the National Council of Arts, Sciences, and Professions is a cited Communist-front organization.

Now, I want to go back to one point, Mr. Barenblatt. Would you please give the committee a brief résumé of your employment background?

Mr. Barenblatt. I held very temporary jobs before the time of my receiving a bachelor's degree. After that I was in the Army.

On being discharged from the Army I worked for a short time for a firm, I believe the name of it was Graphics Institute, in New York.

[fol. 402] I then enrolled in the University of Iowa and I believe the next regular employment after that was as a teaching fellow at the University of Michigan.

Mr. Kunzig. What did you teach?

Mr. Barenblatt. I taught psychologies.

Mr. Kunzig. Psychology?

Mr. Barenblatt. Yes, sir.

Mr. Kunzig. How long did you teach psychology as a teaching fellow at the University of Michigan?

Mr. Barenblatt. Let's see, I believe it was from the fourth semester of 1948 to the spring semester of 1950.

Mr. Kunzig. Would you continue, please.

Mr. Barenblatt. The fall semester of 1950 I was employed as an instructor at Vassar College and continued there until—I believe my contract ran until June 15 of this year at Vassar College.

I am not now employed.

Mr. Kunzig. What did you teach at Vassar College?

Mr. Barenblatt. Psychologies.

Mr. Kunzig. Is your contract finished there?

Mr. Barenblatt. Yes, sir; terminated.

Mr. Kunzig. So at the moment you are unemployed?

Mr. Barenblatt. Yes, sir.

(At this point Mr. Barenblatt conferred with Mr. Wittenberg.)

Mr. Kunzig. I want to ask one thing further, just so the record can be completely clear——

Mr. Barenblatt. Yes, sir.

Mr. Kunzig (continuing). And so there can be no doubt in the written record at all.

You have not, at any time this afternoon during your testimony before this committee in any way sought to invoke or raise the fifth amendment whatsoever up to the present moment, have you?

Mr. Barenblatt. You are entirely correct, sir.

Mr. Velde. Mr. Walter?

Mr. Walter. No.

Mr. Velde. Mr. Doyle?

Mr. Doyle. Mr. Chairman, I think the record should show that at this time there are pending before the United States Congress several active bills dealing with the question of subversive activities, dealing with the question of the Communist Party, dealing with the question of the responsibility that we have as a congressional committee under Public Law 601.

I am sure that is the record, and I would like the record of this hearing of this committee to especially show it——

Mr. Velde. Yes, I think——

Mr. Doyle (continuing). And that this witness and these other witnesses could help us in line with our Public Law 601 responsibility to have hearings with reference to recommendations for legislation in this area under Public Law 601 in accordance therewith.

Mr. Velde. I concur with you, Mr. Doyle, and I wish to further state that the record should show that the evidence or information contained in the files of this committee, some of them in the nature of evidence, shows clearly that the witness has information about Communist activities in the United States of America, particularly while he attended the University of Michigan.

[fol. 403] That information which the witness has would be very valuable to this committee and its work.

It is the opinion of the committee, at least the Chair, that the committee has a constitutional legal right in all ways and forms and means to get the information which has been requested from the witness.

If there is nothing further the witness is excused.

Do you have another witness, Mr. Counsel?

Mr. Kunzig. Mr. Lucas.

Mr. Barenblatt. Thank you, sir.

Mr. Kunzig. Mr. Jack Lucas, L-u-c-a-s; is he in the room, please?

Mr. Velde. Will the officer ask in the hall if Jack Lucas is present.

Mr. Kunzig. Mr. Chairman, I respectfully request that this be postponed until tomorrow.

Mr. Velde. Without objection, it will be postponed and the committee will stand in adjournment until 10:30 tomorrow morning.

(Whereupon at 4 p. m. the hearing was adjourned to Tuesday, June 29, 1954, at 10:30 a. m.)

[fol. 404] GOVERNMENT'S EXHIBIT No. 9

Union Calendar No. 440
83d Congress, 2d Session - - - House Report No. 1192

ANNUAL REPORT

OF THE

COMMITTEE ON UN-AMERICAN ACTIVITIES

FOR THE YEAR 1953

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[fol. 405] COMMUNIST METHODS OF INFILTRATION

(EDUCATION)

At the outset of the 83d Congress, in January 1953, the House Committee on Un-American Activities announced that it planned to hold hearings relating to *individual* members of the teaching profession, who are present or former members of the Communist Party and who had been so identified in sworn testimony given by previous witnesses. It was clearly set forth at that time, and studiously adhered to subsequently, that the investigation and the hearings would deal solely with *individuals* so named and would in no way be an investigation of education or educational institutions. Critics of the committee, and in some instances, other persons who had not taken the trouble to get the true facts of the committee's intention, charged that the committee sought to abridge a fundamental American principle —academic freedom.

The published testimony taken to this time relative to individual educators who had been named under oath as past or present members of the Communist Party will indicate to any honest and fair observer that there has been no effort or attempt on the part of the committee to examine into the text or content of the curriculum of any institution, nor is such an investigation contemplated. The committee has called as witnesses individuals who, either presently or in the past, have engaged in the teaching pro-
[fol. 406] fession and who should, through past experience with subversive organizations, be in a position to furnish the committee with valuable information. Fortunately, many of the persons called did assist the committee by retailing facts within their own knowledge concerning Communist efforts to infiltrate and dominate the teaching profession within the United States.

The field of education in the United States long ago became a prime target for the Communists. Perhaps no other area of American life offers so great an opportunity for the trained and dedicated Communist agent. As the opportunities for higher education for the youth of America have expanded, the responsibility and influence of the teacher

has become more and more important. From the day that a student commences his education, the teacher assumes a collateral responsibility with the parent for the proper training of the individual. It is regrettable that in many instances parents are inclined to place the major burden of responsibility on the teacher, thus relegating the home and parental influence to a place of secondary importance. Obviously, in such cases, the molding of a young mind becomes the total responsibility of the teacher and, in the selection of subject matter and by precept and example, the Communist teacher can and will distort the facts of American life into a hideous mockery of its true reality. That the Communists in the teaching profession have been so few is testimony to the fine work being performed by thousands of loyal and dedicated American citizens who have chosen the teaching profession as their life's work. That a relatively small number of American students have chosen communism in preference to the republican form of government is additional evidence of the basic and fundamental soundness of American education.

Through the course of the committee's hearings and investigations, there has been developed but little evidence that Communist teachers endeavored to indoctrinate the students with the Communist philosophy in the classroom. Testimony indicates that such efforts were in large part confined to extracurricular associations, both on and off the campus. In some instances, these associations took the form of Marxist study groups, from which it was but a short step to more serious gatherings of a semiclandestine nature and subsequently into the secret maze of the Communist Party itself.

The committee, in undertaking an investigation to determine the scope and measure of success attending Communist efforts to infiltrate the field of education, studied the activities of well-known Communist schools such the Jefferson School of Social Science in New York and the Abraham Lincoln School in Chicago, as well as the activities of Communist groups, such as the Labor Youth League, among the students.

The committee has in no way endeavored to dictate to any

university employing a person identified as a member of the Communist Party as to his retention or dismissal.

The first witness heard publicly by the committee was Prof. Robert Gorham Davis, presently an instructor at Smith College. Dr. Davis testified that he had been a member of the Communist Party from January 1937 until the fall of 1939. Of particular interest in the testimony of Dr. Davis was the reason why he had first joined the Communist Party and the reasons why he left it.

[fol. 407] Dr. Davis stated:

Well, I should say that ideologically there were 3 elements: First, the fact of the depression. To my generation it seemed intolerable that men should be unemployed; that food and cotton should be destroyed while people were hungry in a country as advanced technologically as the United States, and with such tremendous natural resources. We sought to understand the reason for the depression, for the waste of natural resources, and were led because of the spirit of the thirties to concern ourselves with the Marxist explanation.

One reason why Marxism appealed to my generation is because we were products of the twenties, educationally—a period of uncertainty and skepticism. Marxism seemed to offer a positive solution—an affirmative philosophy. We also had been taught that the First World War accomplished nothing despite the 4 years of suffering and slaughter. We were determined that another fruitless war of that kind should not occur.

Finally, we were very much aware of the growing menace of Hitlerism, and it seemed that Hitlerism could be stopped internationally, and a developing Fascist movement, or what might turn into a Fascist movement in this country, could be stopped only by organizing a very broad united front—and this the Communist Party purported to do. They did seem to be taking the lead against Hitlerism.

As you remember, this was the period of the movement for collective security in the League of Nations. This was also the period of the Spanish Civil War, when the democracies seemed to be fighting against the armed forces of Hitler and Mussolini in Spain.

All these influences converging made me feel before I went into the party that it was my idea to aline myself with this leadership.

I discovered in the 2 years which followed that I had made a mistake, but my break did not come finally until after the Hitler-Molotov pact, which initiated the Second World War.

I left then not only because of the shift of the line led me into a position which was politically and morally intolerable, but also because I had such experience of the intrigues and duplicity that are inseparable from Communist Party membership with the requirement that one critically defend the Soviet Union, that as a person of morality and sincerity I could remain in that position no longer.

I not only broke with the party, but increasingly in the years that have followed have I felt it necessary to fight the influence of the Communist Party in those areas where I could be most effective.

Dr. Davis also shed considerable light on the subservience of the Communist Party in the United States to the Soviet Union, when he stated:

The shift of policy after 1939 and the rapidity with which the Communist Party in this country fell in line with the Russian policy, even though they didn't understand it, made it quite clear that they were acting for the Soviet Union; that they were in a certain sense Soviet nationalists and not working for the broader interests of the American people.

One of the principal objectives of the Communist Party, during the period that Dr. Davis was a member, was the organization and control of the Teachers' Union. Dr. Davis said:

We worked very hard to build up the Teachers' Union in Harvard and to build up teachers' unions generally, and we did this with a comparatively clear conscience, because our objectives, our immediate objectives, were to improve teaching conditions, raise salaries, and so on; but also obviously we wished teachers to take the same position that we (the Communists) took on public questions.

Dr. Davis furnished an excellent object lesson on how the Communists successfully gain control of groups and

organizations in which they constitute a minority when he explained how the Communists were able to have their members chosen as delegates to national conventions of the Teachers' Union. He explained in this manner:

One reason why Communists were successful was because in these organizations all service was voluntary. The teachers were very busy; trips were expensive, and very fre- [fol. 408] quently those who offered to go were asked to go because no other persons were available, and if a member of the Communist Party offered to go, his offer was usually accepted, if he offered to go to the national convention.

Although the membership of Dr. Davis in the Communist Party had been comparatively brief and during a period some years ago, he made the observation that might be expected of a man of his educational background and experience when he responded to a question as to whether a Communist should be allowed to teach in American universities:

I do not think we should allow the language of liberalism and democracy to be used by those who would destroy liberalism and democracy. That is, I think the Communists necessarily in universities today are dishonest in what they say, whereas Aristotle and Plato were honest.

The committee also had the benefit of the testimony of Daniel J. Boorstin, presently an instructor at the University of Chicago. Mr. Boorstin testified that he had been a member of the Communist Party for a period of about 1 year, terminating his membership in September 1939. Prior to joining the Communist Party in the United States, Mr. Boorstin stated that he had been a member of a Marxist study group while a Rhodes scholar at Oxford, England. He explained that out of a group of approximately 70 American students in England at the time, about 6 of them were members of the same Marxist study group. It was, therefore, with a Marxist background that he joined the Communist Party while a part-time teacher and graduate student at Harvard University in 1938. Mr. Boorstin also furnished the committee with his reasons for joining the Communist Party, and the process through which he learned of the deception and distortion of the Communists' claims. He recalled:

There were a number of circumstances that as I can recall now led me into the group. One was that those were the days of the so-called United Front during which the Communist Party was taking the position of supporting all liberal and progressive groups. Their motto was "Communism Is 20th Century Americanism" at that time.

They had also succeeded in blurring the line between themselves and other groups. Also they were at that time taking a position against anti-Semitism and against the Nazis, and as a Jew that had a certain appeal to me, naturally.

Also during that year Granville Hicks was a counselor in American studies, and he was a well-known person who had written a book about American literature. His presence lent a certain amount of glamour to the group.

In addition to that there were some old friends of mine who had been interested in Marxism at Oxford, who were at Harvard at that time, and as friends of mine they added to the interest of the group.

It is hard to explain the thing any more clearly than that, sir. There were many different things.

Mr. Boorstin's awakening came in much the same fashion as did that of Mr. Davis:

It was a growing disgust with the way of thinking and the attitudes of people in the group. The most dramatic event which brought it out into the open was the Nazi-Soviet Pact, which revealed both the willingness of the Soviet Union to collaborate with nazism and the intellectual bankruptcy of the American Communists who switched their line around according to what the Daily Worker said.

As I recall, the day after the Nazi-Soviet Pact, or just about then, the Communists denied everything they had been saying for years.

Granville Hicks, referred to in the testimony of Mr. Boorstin, was also a witness before the committee and tes- [fol. 409] tified as to his membership in the Communist Party both before and after the time he was a counselor of American studies at Harvard University. Mr. Hicks was a prolific writer for Communist publications during the 1930's. He had been a member of the Communist Party for about 4 years and broke abruptly when the Nazi-Soviet

Pact was signed. Mr. Hicks' testimony again pointed up the fact that has been established in so much of the testimony of former Communist writers—the control exercised over them by the Communist Party.

One of the witnesses called early in the committee's hearings was Wendell H. Furry, a professor at Harvard University. Mr. Furry was called because the committee was aware that he possessed a wealth of information concerning Communist activities in the New England area. It was a disappointment to the committee that, rather than furnish this information, he chose to refuse to answer questions relating to his Communist Party membership on the grounds that to do so might incriminate him. Mr. Furry was offered a second opportunity to appear before the committee, upon his request, and on that occasion he modified his testimony to the extent of denying membership for the past 2 years. He persisted, however, in his refusal to assist the committee in its efforts to gain further information on the Communist conspiracy.

On February 27, 1953, the committee heard the testimony of Barrows Dunham, a professor at Temple University, in executive session. Mr. Dunham refused to answer even the most fundamental questions, such as the record of his educational background. The committee voted that the testimony of Mr. Dunham, such as it was, be released.

In the 15 years of the committee's existence, its members have been subjected to unprecedented abuse from some witnesses who have appeared. One of the most abusive and contemptuous to appear was Abraham Glasser.

Glasser became an employee of the United States Department of Justice in December 1935. The Federal Bureau of Investigation learned, through a Soviet espionage agent who had been arrested by Canadian authorities, that during a period in 1938-39 Glasser had furnished him with information from the files of the Justice Department. As a result of these findings Glasser was suspended from the Department of Justice in June 1941. A résumé of the information relating to Glasser's activities in behalf of the Soviet Government were set forth in a memorandum prepared by Alexander Holtzoff, who is presently a Federal judge in Washington, D. C. This memorandum, which was

prepared in July 1941, set forth the obvious reasons why Glasser should at least be dismissed with prejudice from the Justice Department. In the face of this memorandum, a board appointed to study Glasser's case found that there was not in their opinion sufficient cause for dismissal, although determining that he should not be retained in the service of the Justice Department. Glasser was requested to resign. He did submit his resignation, effective October 31, 1941, and immediately was employed by the Office of Price Administration. No notification was sent to the OPA or the Civil Service Commission by the Department of Justice as to the serious charges or the fact that Glasser's resignation had been requested.

It is little wonder then that, when he was hired by Rutgers University, in July 1947, the officials of that institution [fol. 410] were completely unaware of Glasser's background. When Glasser appeared before the committee in March 1953, he refused to affirm or deny the allegations that he had been engaged in espionage or whether he knew the Soviet agent when shown his picture.

As this investigation progressed, the committee discovered the existence of a Communist cell on the campus of Yale University, New Haven, Conn., during 1947. The committee's investigation disclosed that among the members of the cell were Byron Thorwell Darling, Paul Zilsel, Daniel Fine, Theodore S. Polumbaum, Arthur L. Levy, Harold T. Woerner, Jr., and others who have not yet been called before the committee. The above-named appeared and, with the exception of Zilsel, all refused to affirm or deny allegations that they had been members of a Communist cell at Yale, or were Communists at the present time. Zilsel denied present membership but refused to furnish information on Communist activities at Yale. The committee also heard further testimony from Byron Thorwell Darling in Columbus, Ohio, which will be treated in the section of the report dealing with the Columbus hearings.

The committee also learned of the existence of a Communist cell among members of the faculty at Massachusetts Institute of Technology during the late 1930's, and until at least the middle 1940's. The first witness called in relation

to this cell was William Ted Martin, chairman of the mathematics department at MIT. Mr. Martin testified that he had been a member of the Communist Party from January 1938 until the summer of 1946. He testified that during that period there was a Communist cell consisting of 6 or 7 professors at MIT, and that in turn this cell was part of a broader Communist section of teachers in the Boston and Cambridge area. Another member of this cell, who furnished the committee with valuable information concerning the Communist conspiracy, particularly in relation to the teaching profession, was Isadore Amdur, professor of physical chemistry at MIT. Mr. Amdur gave the committee his opinion as to why a scientist might be attracted to the Communist Party.

I believe that a relatively large number of scientists joined the Communist Party partly because their training and activity makes it natural for them to do so. A scientist, by nature, is a radical person. He is inclined to question everything, to revolt against that which has gone before if, in his opinion, it does not jibe with what he thinks the present facts are, and I believe quite sincerely but personally that scientists are more prone to go into an unpopular organization such as the Communist Party in an attempt to find out what it is all about, and it is my belief that the most radical of the natural scientists are probably the mathematicians. I might allow room for the philosophers; I don't know, but the mathematicians, I believe, would come first in that category. I believe the physicists are a close second and the chemists and biologists and so forth would bring up the rear.

Amdur stated that he had been a member of the Communist Party from 1938 until 1944 and after that was engaged in working on the Manhattan Engineer District. Even though the Manhattan project was one of the most vital and secretive ever undertaken by our Government, and resulted in the development of the atom bomb, Mr. Amdur was never questioned by Manhattan Engineer District authorities as to whether he had been a member of the Communist Party prior to or during his work on the project.

One of the principal criticisms raised in connection with the investigations and hearings by the House Committee on

[fol. 411] Un-American Activities is that universities are themselves capable of detecting which teachers are Communists. The fallacy of this criticism is exemplified by the facts relating to John Henry Reynolds. Reynolds, as were other witnesses, was identified under oath as a one-time member of the Communist Party prior to the time that he was served with a subpena by an investigator for the committee. When he was first contacted by the investigator, Reynolds arranged for an interview in the office of the dean of the University of Florida, and further arranged that the head of the department in which he was an instructor be present. In the presence of these university officials, Reynolds flatly denied that he had ever been a member of the Communist party. In the intervening period between that conference and his appearance before the committee, Reynolds was publicly identified by three witnesses as a one-time member of the Communist Party. When he did appear before the committee, Reynolds refused to affirm or deny membership in the Communist Party on the grounds that to do so might incriminate him.

Evidence on the record indicates that in no instance has a university or other educational institution knowingly employed the services of a member of the Communist Party.

Probably the most succinct statement relative to the committee's investigations and hearings in this field has come from the universities themselves. On March 24, 1953, the Association of American Universities adopted a statement entitled "The Rights and Responsibilities of Universities and Their Faculties." The committee believes that the statement in its entirety should be read by every American and, for that reason, it is reprinted as a portion of this report:

The Rights and Responsibilities of Universities and Their Faculties

(Adopted by the Association of American Universities, March 24, 1953)

I. Role of the University in American Life

For 300 years higher education has played a leading role in the advancement of American civilization. No country

in history so early perceived the importance of that role and none has derived such widespread benefits from it. Colleges moved westward with the frontier and carried with them the seeds of learning. When the university idea was transplanted from Europe, it spread across the Nation with extraordinary speed. Today our universities are the standard bearers of our whole system of education. They are the mainstays of the professions. They are the prime source of our competence in science and the arts. The names of their graduates crowd the honor rolls of two World Wars and of the Nation's peacetime affairs. By every test of war and peace they have proved themselves indispensable instruments of cultural progress and national welfare.

In the United States there is a greater degree of equality of opportunity in higher education than anywhere else in the world. A larger proportion of Americans study in universities and colleges than any other people. These universities have shown and continue to show greater responsiveness to the needs of our society than their European counterparts. They have equipped our people with the varied skills and sciences essential to the development of a pioneer country. They have imparted the shape and coherence of the American Nation to formless immigrant groups. American ideals have been strengthened, the great cultural tradition of the West has been broadened, and enriched by their teaching and example.

Modern knowledge of ourselves and of our universe has been nurtured in the universities. The scientific, technological, medical, and surgical advances of our time were born in them. They have supplied intellectual capital as essential to our society as financial capital is to our industrial enterprise. They have more than justified the faith of the public in our distinctive system of higher education. They have proved themselves dynamic forces of American progress.

[fol. 412] II. THE NATURE OF A UNIVERSITY

A university is the institutional embodiment of an urge for knowledge that is basic in human nature and as old as the human race. It is inherent in every individual. The search that it inspires is an individual affair. Men vary in

the intensity of their passion for the search for knowledge as well as in their competence to pursue it. History therefore presents us with a series of scholarly pioneers who advanced our knowledge from age to age and increased our ability to discover new knowledge. Great scholars and teachers drew students to them, and in the Middle Ages a few such groups organized themselves into the first universities.

The modern university which evolved from these is a unique type of organization. For many reasons it must differ from a corporation created for the purpose of producing a salable article for profit. Its internal structure, procedures, and discipline are properly quite different from those of business organizations. It is not so closely integrated and there is no such hierarchy of authority as is appropriate to a business concern; the permanent members of a university are essentially equals.

Like its medieval prototype, the modern American university is an association of individual scholars. Their effectiveness, both as scholars and as teachers, requires the capitalizing of their individual passion for knowledge and their individual competence to pursue it and communicate it to others. They are united in loyalty to the ideal of learning, to the moral code, to the country, and to its form of government. They represent diversified fields of knowledge, they express many points of view. Even within the same department of instruction there are not only specialists in various phases of the subject, but men with widely differing interests and outlooks.

Free enterprise is as essential to intellectual as to economic progress. A university must therefore be hospitable to an infinite variety of skills and viewpoints, relying upon open competition among them as the surest safeguard of truth. Its whole spirit requires investigation, criticism, and presentation of ideals in an atmosphere of freedom and mutual confidence. This is the real meaning of "academic" freedom. It is essential to the achievement of its ends that the faculty of a university be guaranteed this freedom by its governing board, and that the reasons for the guaranty be understood by the public. To enjoin uniformity of outlook upon a university faculty would put a stop to learning at the source.

For these reasons a university does not take an official position of its own either on disputed questions of scholarship or on political questions or matters of public policy. It refrains from so doing not only in its own but in the public interest, to capitalize the search for knowledge for the benefit of society, to give the individuals pursuing that search the freest possible scope and the greatest possible encouragement in their efforts to preserve the learning of the past and advance learning in the present. The scholar who pursues the search on these terms does so at maximum advantage to society. So does the student. To the scholar, lie open new discoveries in the whole field of knowledge, to his student the opportunity of sharing in those discoveries and at the same time developing his powers of rational thought, intelligent judgment, and an understanding use of acquired knowledge. Thus essential qualities of learning are combined with essential qualities of citizenship in a free society.

To fulfill their function the members of university faculties must continue to analyze, test, criticize, and reassess existing institutions and beliefs, approving when the evidence supports them and disapproving when the weight of evidence is on the other side. Such investigations cannot be confined to the physical world. The acknowledged fact that moral, social, and political progress have not kept pace with mastery of the physical world shows the need for more intensified research, fresh insights, vigorous criticism, and inventiveness. The scholar's mission requires the study and examination of unpopular ideas, of ideas considered abhorrent and even dangerous. For, just as in the case of deadly disease or the military potential of an enemy, it is only by intense study and research that the nature and extent of the danger can be understood and defenses against it perfected.

Timidity must not lead the scholar to stand silent when he ought to speak, particularly in the field of his competence. In matters of conscience and when he has truth to proclaim the scholar has no obligation to be silent in the face of popular disapproval. Some of the great passages in the [fol. 413] history of truth have involved the open challenge of popular prejudice in times of tension such as those in which we live.

What applies to research applies equally to teaching. So long as an instructor's observations are scholarly and germane to his subject, his freedom of expression in his classroom should not be curbed. The university student should be exposed to competing opinions and beliefs in every field, so that he may learn to weigh them and gain maturity of judgment. Honest and skillful exposition of such opinions and beliefs is the duty of every instructor; and it is equally his privilege to express his own critical opinion and the reasons for holding it. In teaching, as in research, he is limited by the requirements of citizenship, of professional competence and good taste. Having met those standards, he is entitled to all the protection the full resources of the university can provide.

Whatever criticism is occasioned by these practices, the universities are committed to them by their very nature. To curb them, in the hope of avoiding criticism, would mean distorting the true process of learning and depriving society of its benefits. It would invite the fate of the German and Italian universities under fascism and the Russian universities under communiism. It would deny our society one of its most fruitful sources of strength and welfare and represent a sinister change in our ideal of government.

We must recognize the fact that honest men hold differing opinions. This fundamental truth underlies the assertion and definition of individual rights and freedom in our Bill of Rights. How does it apply to universities? In the eyes of the law, the university scholar has no more and no less freedom than his fellow citizens outside a university. Nonetheless, because of the vital importance of the university to civilization, membership in its society of scholars enhances the prestige of persons admitted to its fellowship after probation and upon the basis of achievement in research and teaching. The university supplies a distinctive forum and, in so doing, strengthens the scholar's voice. When his opinions challenge existing orthodox points of view, his freedom may be more in need of defense than that of men in other professions. The guaranty of tenure to professors of mature and proven scholarship is one such defense. As in the case of judges, tenure protects the scholar against undue economic or political pressures and ensures the continuity of the scholarly process.

There is a line at which "freedom" or "privilege" begins to be qualified by legal "duty" and "obligation." The determination of the line is the function of the legislature and the courts. The ultimate interpretation and application of the first and fourteenth amendments are the function of the United States Supreme Court; but every public official is bound by his oath of office to respect and preserve the liberties guaranteed therein. These are not to be determined arbitrarily or by public outcry. The line thus drawn can be changed by legislative and judicial action; it has varied in the past because of prevailing anxieties as well as by reason of "clear and present" danger. Its location is subject to, and should receive, criticism both popular and judicial. However much the location of the line may be criticized, it cannot be disregarded with impunity. Any member of a university who crosses the duly established line is not excused by the fact that he believes the line ill drawn. When the speech, writing, or other actions of a member of a faculty exceed lawful limits, he is subject to the same penalties as other persons. In addition, he may lose his university status.

Historically the word "university" is a guaranty of standards. It implies endorsement not of its members' views but of their capability and integrity. Every scholar has an obligation to maintain this reputation. By ill-advised, though not illegal, public acts or utterances he may do serious harm to his profession, his university, to education, and to the general welfare. He bears a heavy responsibility to weigh the validity of his opinions and the manner in which they are expressed. His effectiveness, both as a scholar and teacher, is not reduced, but enhanced, if he has the humility and the wisdom to recognize the fallibility of his own judgment. He should remember that he is as much a layman as anyone else in all fields except those in which he has special competence. Others, both within and without the university, are as free to criticize his opinions as he is free to express them.

As in all acts of association, the professor accepts conventions which become morally binding. Above all, he owes his colleagues in the university complete candor and perfect integrity, precluding any kind of clandestine or con-

spiratorial activities. He owes equal candor to the public. If he is called upon to answer for his convictions it is his duty as a citizen to speak out. It is even more definitely his duty as a professor. Refusal to do so, on whatever legal grounds, cannot fail to reflect upon a profession that claims for itself the fullest freedom to speak and the maximum [fol. 414] protection of that freedom available in our society. In this respect, invocation of the fifth amendment places upon a professor a heavy burden of proof of his fitness to hold a teaching position and lays upon his university an obligation to reexamine his qualifications for membership in its society.

In all universities faculties exercise wide authority in internal affairs. The greater their autonomy, the greater their share of responsibility to the public. They must maintain the highest standards and exercise the utmost wisdom in appointments and promotions. They must accept their share of responsibility for the discipline of those who fall short in the discharge of their academic trust.

The universities owe their existence to legislative acts and public charters. A State university exists by constitutional and legislative acts, an endowed university enjoys its independence by franchise from the State and by custom. The State university is supported by public funds. The privately sustained university is benefited by tax exemptions. Such benefits are conferred upon the universities not as favors but in furtherance of the public interest. They carry with them public obligation of direct concern to the faculties of the universities as well as to the governing boards.

Legislative bodies from time to time may scrutinize these benefits and privileges. It is clearly the duty of universities and their members to cooperate in official inquiries directed to those ends. When the powers of legislative inquiry are abused, the remedy does not lie in noncooperation or defiance; it is to be sought through the normal channels of informed public opinion.

IV. THE PRESENT DANGER

We have set forth the nature and function of the university. We have outlined its rights and responsibilities and

those of its faculties. What are the implications of current anxiety over Russian communism and the subversive activities connected with it?

We condemn Russian communism as we condemn every form of totalitarianism. We share the profound concern of the American people at the existence of an international conspiracy whose goal is the destruction of our cherished institutions. The police state would be the death of our universities, as of our Government. Three of its principles in particular are abhorrent to us: the fomenting of world-wide revolution as a step to seizing power; the use of falsehood and deceit as normal means of persuasion; thought control—the dictation of doctrines which must be accepted and taught by all party members. Under these principles, no scholar could adequately disseminate knowledge or pursue investigations in the effort to make further progress toward truth.

Appointment to a university position and retention after appointment require not only professional competence, but involve the affirmative obligation of being diligent and loyal in citizenship. Above all, a scholar must have integrity and independence. This renders impossible adherence to such a regime as that of Russia and its satellites. No person who accepts or advocates such principles and methods has any place in a university. Since present membership in the Communist Party requires the acceptance of these principles and methods, such membership extinguishes the right to a university position. Moreover, if an instructor follows communistic practice by becoming a propagandist for one opinion, adopting a "party line," silencing criticism or impairing freedom of thought and expression in his classroom, he forfeits not only all university support but his right to membership in the university.

"Academic freedom" is not a shield for those who break the law. Universities must cooperate fully with law-enforcement officers whose duty requires them to prosecute those charged with offenses. Under a well-established American principle their innocence is to be assumed until they have been convicted, under due process, in a court of proper jurisdiction.

Unless a faculty member violates a law, however, his discipline or discharge is a university responsibility and

should not be assumed by political authority. Discipline on the basis of irresponsible accusations or suspicion can never be condoned. It is as damaging to the public welfare as it is to academic integrity. The university is competent to establish a tribunal to determine the facts and fairly judge the nature and degree of any trespass upon academic integrity, as well as to determine the penalty such trespass merits.

As the professor is entitled to no special privileges in law, so also he should be subject to no special discrimination. Universities are bound to deprecate special loyalty [fol. 415] tests which are applied to their faculties but to which others are not subjected. Such discrimination does harm to the individual and even greater harm to his university and the whole cause of education by destroying faith in the ideals of university scholarship.

V. CONCLUSION

Finally, we assert that freedom of thought and speech is vital to the maintenance of the American system and is essential to the general welfare. Condemnation of communism and its protagonists is not to be interpreted as readiness to curb social, political, or economic investigation and research. To insist upon conformity to current beliefs and practices would do infinite harm to the principle of freedom, which is the greatest, the central, American doctrine. Fidelity to that principle has made it possible for the universities of America to confer great benefits upon our society and our country. Adherence to that principle is the only guaranty that the Nation may continue to enjoy those benefits.

The committee recognizes the area of its jurisdiction and its limitations in this vital field, and will be so governed in the continuation of this investigation.

The results of the investigation and hearings, to date, serve to illustrate beyond question that Communist infiltration into the teaching profession has been limited, but the committee views with concern the fraction of Communist influence which has succeeded in achieving tenure.

[fol. 416] PAST RECOMMENDATIONS

In the past years the House Committee on Un-American Activities, after exhaustive study of its investigations and hearings, has, from time to time, made recommendations to the Congress for the enactment of legislation necessary to combat subversion.

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In order that the Congress and the American people might have an understanding of the recommendations that have been made by the committee in the past, there follows a complete list of all recommendations made by this committee since the first session of the Seventy-sixth Congress.

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[fol. 417] Legislative recommendations contained in Report No. 1, 77th Congress, 1st session, dated January 3, 1941:

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Withhold all Federal financial support from any educational institution which permits members of its faculty to advocate communism, fascism, or nazism as a substitute for our form of Government to the student body of these educational institutions. (This particular recommendation is not concurred in by Mr. Voorhis, not because of disagreement with the principle involved but on the ground that the administration of such an act is impossible without risking grave injustice being done to people seeking merely to explain the principles involved in totalitarian philosophy.)

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[fol. 418] SUBSEQUENT ACTION TAKEN BY CONGRESS OR EXECUTIVE AGENCIES ON PAST RECOMMENDATIONS

RECOMMENDATIONS CONTAINED IN ANNUAL REPORT OF COMMITTEE, 77TH CONGRESS, 1ST SESSION, DATED JANUARY 3, 1941

* * * * * * * *

Federal aid to educational institutions

4. *Committee recommendation.*—Withhold all Federal financial support from any educational institution which

[fol. 419] permits members of its faculty to advocate communism, fascism, or nazism as a substitute for our form of government to the student body of these educational institutions (January 3, 1941).

Action.—Section 228 of the *Veterans' Readjustment Assistance Act of 1952* (66 Stat. 667) prohibits the payment of an education and training allowance to any eligible veteran who enrolls for any course in an educational institution which is listed by the Attorney General as totalitarian, Fascist, Communist, or subversive. For text of this section; see appendix, page 181.

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[fol. 420] GOVERNMENT'S EXHIBIT No. 10

Union Calendar No. 19
84th Congress, 1st Session House Report No. 57

COMMITTEE ON UN-AMERICAN ACTIVITIES

ANNUAL REPORT FOR THE YEAR 1954

[Rubber Stamp—Filed Apr 27 1956 Harry M. Hull, Clerk]

JANUARY 26, 1955

(Original Release Date)

FEBRUARY 16, 1955.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Prepared and released by the
Committee on Un-American Activities, U. S. House of Representatives Washington, D. C.

[fol. 421] FOREWORD

[fol. 422] During 1954 the House of Representatives implemented by legislation a number of past recommendations of the Committee on Un-American Activities. The

committee in its annual report for the year 1953 detailed the past recommendations made by this committee and the Special Committee on Un-American Activities. It is worthy of note that at the commencement of 1954 all but 8 of the committee's 47 recommendations had been favorably acted upon by Congress or the executive branch.

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[fol. 423] MICHIGAN

The committee's hearings in Michigan during 1954 were held in Detroit, Lansing, and Flint; 12 of the subpenaed witnesses not heard during May were called to give testimony in Washington, D. C., in November. In addition to this, the committee during the past year, heard testimony from Merton Sumner, who was a member of the Communist Party during his period of residence in Grand Rapids, Mich., and from Francis X. Crowley, who was a member of the Communist Party while a student at the University of Michigan at Ann Arbor.

These hearings could be properly considered as a continuation of the hearings which the Committee on Un-American Activities held in Detroit, Mich., in 1952. As a matter of fact, in 1952 the committee reported that during [fol. 424] its investigation the identity of over 600 individuals as Communist Party members was obtained.

The 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success. The concentration of the Communist Party as outlined by this report is not the figment of a dream by the committee but comes directly from the Communist Party itself. This concentration is set forth in a directive to all Communist groups, sections, commissions, and departments, which the committee obtained during its investigation. This directive, while intending to advertise the Communist Party as an organization interested in furthering the trade-union movement, falsifies its own advertisement by placing all emphasis on the need to repeal all laws used against the Communist Party and its mem-

bers, including the Smith Act, the non-Communist affidavit section of the Taft-Hartley law and the Walter-McCarran Immigration Act. Of secondary importance in the directive, but equally stressed, is what the Communists refer to as "the People's Peace" program. This program is set forth as a campaign against NATO, friendship with the Soviet Union, and the opening of trade channels with the "People's Democracies," China, and the Soviet Union.

The Communist Party, in its directive, sets forth that the accomplishment of its program can be achieved only through a successful concentration in the auto industry. It reminds Communist Party members that concentration in the auto industry is not the function only of those Communist employees within the industry but, rather, that it is the responsibility of all Communists.

In 1952, the committee saw signs and had partial evidence of the Communist Party moving its members from white-collar and professional positions into the auto industry from other geographical locations in the United States. The directive of the Communist Party on concentration in the auto industry gives a clue as to why, and this is the reason the committee devoted a portion of its investigation and hearings to the city of Flint. In the directive, the Communist Party called for a drastic improvement in the work among General Motors workers. The directive states:

* * * Flint is the key to moving the GM division of the UAW, the division which Reuther heads and therefore the key to striking a powerful blow against social democracy. Whatever develops in Flint has great influence on the entire UAW.

* * * Where party work was on a relatively higher level as in Ford, the anti-Reuther strength was greatest. In GM, our main national concentration sector, the progressives were weakest of all. * * * It's therefore clear that we need a drastic improvement in our work in auto, in the first place in our work in GM, without in any way curtailing our work in Ford which remains our main concentration point in Michigan's Wayne County.

To strengthen itself within General Motors, the Communist Party in 1949 issued instructions to its members to

drop employment in non-basic industries, if they were presently employed, and urged the Communist members in colleges to seek basic-industry employment, even though their educational training qualified them for a higher type of employment.

During the Flint hearings, members of the Communist Party, some with college degrees, were found employed on [fol. 425] General Motors assembly lines. Not only were they employed, but the committee found that many of the Communists subpenaed before it went so far as to cover up their college education or degrees and resorted to the manufacturing of previous employment.

One witness, Marvin M. Engel, on his application for employment with the Chevrolet Motor Division of General Motors, claimed no college education when, as a matter of fact, he had received a social-science degree from the City College of New York. As previous employment, he listed the Universal Fence Co. of Detroit as being his employer for some 30 months. Sidney Linn, signing as an officer of the Universal Fence Co., confirmed Engel's 30-month employment with his concern. Yet, the truth of the matter was that Engel had never been employed by the Universal Fence Co., according to his own sworn testimony before the committee. Whether there is a bearing, the committee has no proof, but sworn testimony before the committee identified both Engel and Linn as members of the Communist Party in Michigan.

Other illustrations similar to that of Engel were reproduced throughout the Michigan hearings. The committee is of the opinion that these young Communists were directed into Michigan for the purpose of fulfilling the Communist dream, namely the need for "a drastic improvement in our [Communist Party] work in auto."

Communist Party colonizers, similar to the 25 exposed in Flint and other Michigan hearings, were the main target of the committee's 1954 investigation. Lack of adequate investigative personnel made it impossible to expose fully the infiltration in Michigan. Left in a pending stage were partial identities of some 75 other members of the Communist Party sent into the Michigan area for the purpose of building up the Communist Party's concentration within

the auto industry. The committee regrets that it was unable to complete its investigation in this field, but, at the same time, it feels that, if industry and labor would concern themselves more with the infiltration into their midst of potential Communist saboteurs, they could be removed from the auto industry without need of congressional investigation.

The Communist Party directive, in outlining the role to be played by the entire membership of the Communist Party in its concentration in auto, set forth the need to organize for peace (Soviet-proposed), for activities in political subdivisions surrounding Detroit, and for propagandizing among auto workers' wives and children with instruments such as the Michigan Worker and other Communist publications.

The bulk of the witnesses heard in Detroit, Mich., and later in Washington, D. C., were called to ascertain and expose the activities of the Communist Party in these broad fields. Joseph Chrin, who was shown by sworn testimony to have been a member of the Communist Party, was the leader of the Down River Citizens Committee. The Down River Citizens Committee operated in the communities heavily populated by Ford workers. It advertised as a political organization interested in the betterment of the Down River community. In fact and in practice, as set forth by sworn testimony, the Down River Citizens Committee was solely a vehicle of the Communist Party. Its program, while supporting many worthy issues and candidates for public office, was nevertheless geared to fulfill the objectives of the Communist Party. Harold Robertson, who was identified as a member of the Commu-
[fol. 426] nist Party living in Inkster, Mich., was found to have been a candidate for political office in his community and also a political appointee to the school board.

During the committee's investigation, it uncovered members of the Communist Party holding influential positions in the school systems of Detroit and other communities. Most of the teachers subpenaed before the committee refused to answer questions with respect to their membership in the Communist Party, on the ground that to do so would tend to incriminate them. Most of the teachers

called have been suspended or permanently removed from their positions. The Committee on Un-American Activities approves of this action because the committee has found that the delivery of a student into the tutelage of a member of the Communist Party has been responsible for the destruction of thousands of American homes. It is horrible enough to lose 13 Americans to Red China as a result of a war, especially when the war was not of America's choosing. It is far more horrible to lose one American to the Communist conspiracy through a teacher in a free educational institution of America.

As a result of the hearings held in Michigan in 1952 and again in 1954, the Committee on Un-American Activities calls upon the American labor movement, in addition to its ever-increased vigilance toward communism, to amend its constitutions where necessary in order to deny membership to a member of the Communist Party or any other group which dedicates itself to the destruction of America's way of life. It is certainly not within the best interests of the security of the United States, nor of the interest of the unions, to permit a member of the Communist Party or any other totalitarian party to work 8 hours a day in an American industry with the protection of a union contract and, at the same time, supply him with a captive audience of thousands through which he can preach his program of destruction. It is said that the worker is far too smart to be suckered into accepting the Communist harangue. It is admitted that the American worker, through education on the evils of communism and other totalitarianisms by both his union and his employer, has more knowledge on the subject today than at any time during his life. Nevertheless, the Communist Party is receiving new recruits daily from the ranks of labor, admittedly not so many as in the past. It is difficult to believe, however, that this recruitment would be as great if Communist Party organizers and advocates were removed from the captive audience which union and industry place around them in the shop.

The testimony of the following witnesses added much to the information of the committee regarding the scope of Communist activities in the State of Michigan:

Baldwin, Bereniece	May 7, 1954.
Churchill, Beatrice	May 12, 1954.
Daly, Francis Martin, Jr.	Apr. 30, 1954.
Donnelly, Herbert H	May 14, 1954.
Johnson, William H. (Bill)	May 4, 1954.
Klein, Lawrence R	Apr. 30, 1954.
Mikkelsen, Harold M	May 4, 1954.
Santwire, Milton Joseph	Apr. 28, 1954.
Schemanske, Stephen J	Apr. 29, 1954.
Stepanchenko, Frank	Apr. 29, 1954.
Witness X	Apr. 30, 1954.

* * * * * * *

[fol. 428] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 1154-54

Charge Violation of Section 192, Title 2, U. S. Code.

UNITED STATES

v.

LLOYD BARENBLATT, Defendant.

TRIAL CERTIFICATE—Filed March 15, 1956

On this 15th day of March, 1956, came again the parties aforesaid, in manner as aforesaid, and the same jury as aforesaid in this cause, the hearing of which was respited yesterday; whereupon, with the consent of the United States Attorney and the approval of the Court, the defendant waives trial by jury; and thereupon the waiver of trial by jury is filed in open Court; whereupon the jury and the two alternate jurors are discharged from further consideration in this case; and thereupon trial by Court proceeds.

It is adjudged by the Court that the defendant is guilty as indicted. The case is not referred to the Probation Officer of the Court.

The defendant is sentenced to imprisonment for a period of Six (6) months and to pay a fine of Two Hundred and Fifty ($250.00) Dollars. The defendant is permitted to remain on bond pending appeal.

By direction of

Alexander Holtzoff, Presiding Judge, Criminal Court #3.

Harry M. Hull, Clerk, by /s/ Daniel J. Mencobom, Deputy Clerk.

Present: United States Attorney, by William Hitz, Assistant United States Attorney.

Thomas O'Neal, Official Reporter.

[fol. 429] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal No. 1154-54

UNITED STATES OF AMERICA,

v.

LLOYD BARENBLATT.

JUDGMENT AND COMMITMENT—March 15, 1956

On this 15th day of March, 1956 came the attorney for the government and the defendant appeared in person and[1]

[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

by counsel, Messrs. Joseph A. Fanelli and Philip Wittenberg.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of Violation of Section 192, Title 2, U. S. Code as charged[2] and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Six (6) months and to pay a fine of Two Hundred and Fifty ($250.00) Dollars and that the defendant be further imprisoned until payment of the fine or until otherwise discharged as provided by law.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Alexander Holtzoff, United States District Judge.

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[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number ," if required.

[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[fol. 430] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE OF APPEAL—Filed March 23, 1956

Name and address of appellant Lloyd Barenblatt, New York, New York.

Name and address of appellant's attorney Joseph A. Fanelli, 1701 K Street, N.W., Washington 6, D. C.

Offense Contempt of Congress.

Concise statement of judgment or order, giving date, and any sentence 3/15/56 Judge Holtzoff sentenced appellant to six months imprisonment and a fine of $250.

Name of institution where now confined, if not on bail On bail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

Date 3/16/56.

/s/ Lloyd Barenblatt, Appellant.

/s/ Joseph A. Fanelli, Attorney for Appellant.

[fol. 431] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 432] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,327

LLOYD BARENBLATT, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court
for the District of Columbia

Mr. David Scribner, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom Mr. David Rein was on the the (sic) brief, for appellant.

Mr. John D. Lane, Assistant United States Attorney, with whom Messrs. Oliver Gasch, United States Attorney, Lewis Carroll and William Hitz, Assistant United States Attorneys, were on the brief, for appellee.

OPINION—Decided January 3, 1957

Before Washington, Bastian and Burger, Circuit Judges.

BASTIAN, Circuit Judge: Appellant was tried, convicted and sentenced under 2 U.S.C. § 192 (1952)[1] (contempt of

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[1] "*Refusal of witness to testify.* Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

[fol. 433] Congress). From this conviction the present appeal was taken.

The factual situation disclosed by the record is as follows: On June 28, 1954, one Francis X. T. Crowley testified before a subcommittee of the Committee on Un-American Activities of the House of Representatives concerning his past membership and activities in the Communist Party, and identified the appellant as a member of the Haldane Club of the Communist Party while appellant was a graduate student and instructor at the University of Michigan. On that same day, appellant appeared before the subcommittee in response to its subpoena, at which time, after certain preliminary inquiries, appellant was asked the questions which he refused to answer. These refusals are the basis for his indictment, which charges that appellant "unlawfully refused to answer" the following questions:

"Count One: Are you now a member of the Communist Party?

"Count Two: Have you ever been a member of the Communist Party?

"Count Three: Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?

"Count Four: Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?

"Count Five: Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions?"

[fol. 434] The indictment charges that these questions "were pertinent to the question then under inquiry," and that the subcommittee was conducting hearings at the time pursuant to its enabling resolution.[2] This law establishes

[2] Public Law 601, Sec. 121, 79th Cong., 2d Sess. (60 Stat. 828), and H.R.Res. 5, 83d Cong., 1st Sess. (1953).

the Committee on Un-American Activities and vests in it, and its duly constituted subcommittees, the duty:

> "... to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

At the time of appellant's appearance, the subcommittee was conducting an inquiry into communism in the field of education, and the record reflects that appellant had knowledge of this.

I

The first ground urged for reversal is that the indictment is fatally defective in that it does not plead a deliberate and intentional or knowing refusal to answer. This specific question was ruled on by this court contrary to appellant's contention in *United States* v. *Deutch*, —— U.S.App.D.C. ——, 235 F.2d 853 (1956).

The argument is also advanced that the indictment is defective in that it does not describe the matter into which the subcommittee was inquiring at the time appellant appeared before it. The indictment alleges an unlawful refusal to answer "questions which were pertinent to the question then under inquiry," which inquiry was made pursuant to the subcommittee's enabling resolution. [fol. 435] Thus, it appears that the indictment stated all the elements of the offense charged and served notice on appellant as to what conduct on his part constituted the alleged offense. This satisfies the requirements of Fed. R. Crim. P. 7(c). See *United States* v. *Josephson*, 165 F.2d 82 (2d Cir. 1947), *cert. denied*, 333 U.S. 838 (1948).

It is also contended that the indictment is fatally defective in that it alleges a refusal to answer questions before a subcommittee of a committee, and that Congress

did not intend to make it a crime to refuse to answer questions of a subcommittee. Appellant urges that Congress was fearful of having penal sanctions imposed upon those who refused to answer questions propounded by subcommittees, as Congress considered subcommittees more subject to partisanship and more likely to abuse their powers than full committees. We disagree. Nothing has been shown which reflects that Congress has indicated such belief. We can only construe the statute in the light of the obvious purpose for its enactment. That purpose was to discourage the impairment of the vital investigative function of Congress. *Fields* v. *United States*, 82 U.S.App.D.C. 354, 164 F.2d 97, *cert. denied*, 332 U.S. 851 (1948). The function Congress sought to protect is as often committed to subcommittees as it is to full committees of Congress, as indeed it must be.

Construing the statute in a manner consistent with its obvious purpose [*Vermilya-Brown Co.* v. *Connell*, 335 U.S. 377 (1948), *United States* v. *Brown*, 333 U.S. 18 (1948), *The Emily and The Caroline*, 22 U.S. (9 Wheat.) 381 (1824)] we hold that Congress intended the word "committee" in its generic sense, which would include subcommittees.

II

Next, appellant contends that the subcommittee failed to consider and overrule his objections to the questions asked him, and that, therefore, there could be no proof beyond a reasonable doubt of a criminal intent to refuse [fol. 436] to answer. He insists that to meet this burden the subcommittee must be shown to have considered his objections, to have overruled them, and then to have directed him to answer. In support, appellant cites *Quinn* v. *United States*, 349 U.S. 155 (1950), *Emspak* v. *United States*, 349 U.S. 190 (1950), and *Bart* v. *United States*, 349 U.S. 219 (1950).

The record of the subcommittee hearing for the day appellant appeared was admitted in evidence at the trial.[3]

[3] Hearings Before the House Committee on Un-American Activities on Communist Methods of Infiltration (Education—Part 9), 83d Cong., 2d Sess. (1954), Gov. Exhibit No. 8.

From that record, we are convinced that appellant did communicate his objections to the subcommittee and that he was clearly directed to answer each of the questions. Furthermore, it is entirely clear that appellant had ample opportunity to state any additional objections he may have had.

Appellant came before the subcommittee with an eleven-page written statement, which he characterized as his objections to the questions asked of him. Whenever he was asked a question which he refused to answer, appellant asked permission, or attempted without permission, to read the prepared statement. The Chairman ruled that it was a preliminary statement, which, under the rules of the subcommittee (with which appellant admitted familiarity) had to be filed a reasonable time in advance of appearance before the subcommittee.[4] At one point [fol. 437] appellant asserted:

> "I am objecting on these grounds, and I will not answer any questions about which the list of objections is read: my political beliefs; my religious beliefs; any other personal and private affairs; my associational activities.
>
> "I will not answer any of those questions on the grounds of my objections in this statement which I again respectfully request that I be able to read at this point to get into the record the objections so that we can proceed from that point."

This assertion by appellant was made before he was directed to answer the question set forth in the first count of the indictment.

Prior to making the objection referred to above, appellant had stated, in response to a question:

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[4] The statement can best be described as a lengthy legal brief attacking the jurisdiction of the committee to ask appellant any questions or to conduct any inquiry at all, based on the First, Ninth and Tenth Amendments, the prohibition against bills of attainder, and the doctrine of separation of powers. This brief cited more than twenty Supreme Court decisions, some of which do not concern the congressional power of investigation; and, in several instances, dissenting opinions were cited.

"Sir, I would like here to state my objections to the power and jurisdiction of this committee to inquire into my political beliefs, my religious beliefs, and any other personal and private affairs . . ."

The Chairman, as stated, had regarded the written statement as a preliminary one and had ruled that it would be taken under advisement as to whether or not it might be inserted into the record. Faced with continued refusal to answer the questions and appellant's repeated attempts to read the lengthy statement, the Chairman waived compliance with the rules of the subcommittee and accepted the statement into the record. Thereafter, when appellant refused to answer a question, he referred to the statement, as the subcommittee suggested that he do, as the basis of his refusal. The record reflects that one member of the subcommittee had read the statement but it does not show that the other members had done so. It is this upon which appellant relies when he argues that the subcommittee failed to consider his objections. With that position we cannot agree.

First, appellant did communicate to the subcommittee the general basis of the objections contained in his written statement. [fol. 438] Secondly, one member of the subcommittee, shown by the record to have read the statement, indicated his belief that the statement contained no valid grounds for refusal to answer; and, in admitting the statement into the record, the Chairman indicated that he was relying on that member.

We cannot, within the limited power of a court to review the procedures of a congressional committee, insist that such a committee interrupt its proceedings for detailed examination of a lengthy attack on its power to ask a question or to make any inquiry at all.[5] Certainly, the subcommittee had the right to insist that objections be cast in a reasonable form.

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[5] *Cf. Eisler* v. *United States*, 83 U.S.App.D.C. 315, 170 F.2d 273 (1948), *cert. dismissed*, 338 U.S. 883 (1949); *Barsky* v. *United States*, 83 U.S.App.D.C. 127, 167 F.2d 241 (1948), *cert. denied*, 334 U.S. 843.

Thirdly, to the extent that appellant had an objection which was not actually communicated to the subcommittee, he has no one to blame but himself. The record does not disclose that the subcommittee denied appellant a right to object to questions or that it was in any way abusive in its treatment of him. On the contrary, the subcommittee demonstrated not only considerable patience but active interest in determining what appellant's objections were. This was true even to the extent that appellant was asked several times if the grounds for his objections encompassed the Fifth Amendment privilege against self-incrimination, which he stated they did not.

Briefly stated, our conclusions are: that appellant actually apprised the subcommittee of his objections; that the subcommittee found them unacceptable and directed appellant to answer; that the courts cannot require a committee to make a detailed study of what may be fairly described as a lengthy legal brief before it directs a witness to answer; that appellant had numerous opportunities to make known any additional objections he may [fol. 439] have had but that he instead insisted upon reading his eleven-page statement; that that statement was read by one member of the subcommittee and found unpersuasive; and that the Chairman, relying on this member's knowledge of the statement, and its purport as communicated by the witness, directed an answer to each question. Therefore, we must hold that appellant's refusals to answer were at his own risk.

Quinn v. *United States, supra,* is not inconsistent with our view; we read that case as buttressing our conclusions. It concerned a witness who, instead of stating the grounds of his objections to questions of a congressional committee, represented his objections as being the same as those interposed by a previous witness, which objections had been vague and ambiguous. The Supreme Court held that, though Quinn had only vaguely asserted an objection based on the Fifth Amendment, the committee should have overruled his objection and specifically directed him to answer, before he could be convicted for contempt of Congress. It is noteworthy that the Supreme Court stated:

> "But the fact that a witness expresses his intention [to object on grounds of the Fifth Amendment] in vague terms is immaterial so long as the claim is sufficiently definite to apprise the committee of his intention. As every one agrees, no ritualistic formula is necessary in order to invoke the privilege." 349 U.S. at 164.

Consistent with *Quinn*, we conclude that appellant did apprise the subcommittee of his objections based on the First Amendment. Certainly, there is no doubt here that the subcommittee, when it directed appellant to answer each question, knew that appellant objected. It knew the general bases of the objections and rejected them. It gave him an opportunity to make any objections not communicated. It then directed him to answer each question set forth in the indictment.

[fol. 440] III

Appellant next contends that the primary purpose of the subcommittee's inquiry was to "expose" his beliefs and associations and that, therefore, the subcommittee exceeded the bounds of its investigative power. There can be no doubt that Congress has the power of inquiry and investigation when the inquiry or investigation is upon a subject concerning which Congress may legislate. The very resolution establishing the committee indicates that the subject under inquiry was one concerning which Congress could legislate. The fact that such an inquiry or investigation may reveal or "expose" some facts embarrassing to some one is incidental and without effect upon the validity of the inquiry.

Evidence was presented at the trial to show that the House Committee on Un-American Activities had been engaged in a continuing investigation into communist methods of infiltration and that one aspect of this investigation dealt with the field of education.[6] The trial court found that it was as a part of this larger and continuing study that appellant was called to testify.

[6] Annual Report of the Committee on Un-American Activities for the Year 1953, H.R.Rep. No. 1192, 83d Cong., 2d Sess. (1954).

The committee Chairman opened the first hearing on the subject of communist infiltration into the field of education on February 25, 1953, by stating the nature and purpose of the inquiry.[7]

Appellant urges that a statement in the Annual Report of the Committee to the effect that hearings were set up to demonstrate to the people of Michigan the infiltration into the field of education in Michigan "and the identity of those individuals responsible for its success . . ." shows that "exposure," not legislation, was the point and [fol. 441] purpose of the hearings. This statement, in context, is part of an extended discussion of the whole activity of this committee and cannot be regarded as a statement of the sole or primary objective and, however it may conflict with the broader objectives, does not justify reversal of appellant's conviction. Courts must presume congressional investigations to have valid legislative purposes. *Townsend* v. *United States,* 95 F.2d, 352, *cert. denied,* 303 U.S. 664 (1938). Since the statement relied on does not negate the presence of other, and we think legitimate, purposes of the inquiry, the presumption of valid purposes is still operative and unrebutted. A reading of the full report indicates that the primary purposes of the inquiry were in aid of legislative processes.

Examination of the report shows that legislative recommendations were made by the committee " . . . based upon investigations and hearings, in the year, 1954." It is unnecessary for present purposes to comment on those recommendations except to say that they called for significant legislation, and illustrate that the committee did in fact recommend legislation based upon investigations and hearings in 1954, perhaps including the very hearing at which appellant testified. Apparently "exposure," if a purpose of the hearing in question, was not the primary purpose.

The subcommittee was investigating communist infiltration in the field of education, and did so pursuant to its duty to investigate the extent, character, and objects of un-American propaganda activities in the United States,

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[7] For the statement of the Chairman see the appendix hereto.

and all other questions related thereto that would aid Congress in its legislative function. Taking this into consideration, together with the statement of the Chairman at the time the inquiry was inaugurated in February 1953, as well as the statement of the committee counsel on the morning appellant appeared to testify,[8] we conclude that [fol. 442] the subcommittee's dominant purpose in examining appellant was to acquire information which it regarded as useful in formulating legislative recommendations. This is a more valid appraisal than would result from concentrating on one isolated statement in the Annual Report. So long as competent evidence establishes a substantial legislative purpose in calling a witness before a congressional committee, and in its examination of him, we will not balance this purpose against other motivations. Once it is proven that the committee felt induced to call a witness in order to acquire information in aid of legislative processes, we think our limited function is exhausted.

We are next asked to decide whether Congress possesses the power to investigate citizens who are engaged in the educational systems of the country. Appellant maintains that Congress cannot do this because the field of education has been reserved to the states, and that, under the Tenth Amendment, Congress has no authority to legislate in that sphere.

We must ascertain specifically the subject under inquiry at the time appellant appeared as a witness before the subcommittee. The official report of the Committee on Un-American Activities, which contains the testimony of appellant before the subcommittee, is entitled "Communist Methods of Infiltration (Education—Part 9)." This report indicates that, on the day appellant was heard by the subcommittee, the Chairman asked the committee counsel to state the purposes and reasons for the hearing. Counsel stated, among other things, that Crowley, a for-

[8] Communist Methods of Infiltration (Education—Part 9), note 3 *supra*, at 5754: "The field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York. Without further ado, Mr. Chairman, if I have your permission I will call the witness."

merly recalcitrant witness, had volunteered to come before the subcommittee and that "[t]he field covered will be [fol. 443] in the main communism in education and the experiences and background in the party by Francis X. T. Crowley." The same day that the subcommittee heard Crowley, it examined appellant. Thus, we see that the title given the inquiry, "Communist Methods of Infiltration (Education—Part 9)," was consistent with the announced subject of the inquiry at the time appellant appeared. Looking further, the nature, purpose, and hope of the committee, when it began this general, continuing inquiry in February 1953, can be determined by examining Government Exhibit No. 7.[9] We take these statements of the Chairman as conclusive of the purpose of the inquiry pursuant to which appellant was called as a witness.

The inevitable result is that the purpose and nature of the inquiry was to determine communist methods of infiltration in the field of education. There is no indication of a congressional desire or attempt to examine curricula, content of text books, administration of schools, or criteria for employing and discharging teachers. Indeed, the committee's official report on this investigation negatives any such interpretation of the intent of Congress. There is nothing to suggest that education, as such, was any more involved here than were labor unions and the motion picture industry in earlier inquiries by this same congressional committee. Convictions of witnesses called pursuant to both of these latter investigations have been affirmed in the courts.[10]

While it is true, as appellant points out, that Congress has broader powers to enact legislation in the field of labor than it does in the field of education, it is not true that persons who incidentally happen to be teachers have greater immunity from inquiry into their activities than [fol. 444] do labor leaders and screen writers, when those activities relate to matters which are a legitimate concern

[9] See appendix.

[10] See, *e.g.*, *Flaxer* v. *United States*, 235 F.2d 821 (D.C.Cir. 1956); *Lawson* v. *United States*, 85 U.S.App.D.C. 167, 176 F.2d 49 (D.C.Cir. 1949), *cert. denied*, 339 U.S. 972 (1950).

of the Congress. By virtue of their great profession, teachers owe a higher duty, morally at least, to their country and its citizenry; but their status as teachers does not confer upon them a right not to have their separate or collateral activities inquired into when the same activities by others may be.

Shortly before appellant appeared before the subcommittee, its parent body had recommended to the Congress, and Congress had enacted, the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 667,[11] which provides that educational stipends shall not be paid to veterans in attendance at educational institutions listed by the Attorney General as totalitarian, fascist, communist or subversive. This is significant in that it demonstrates a valid legislative interest in the incidence of communist infiltration into educational institutions and the number, location and identity of communists in the schools, in order that Congress might be informed of a need to extend or repeal the Act.

American colleges and universities are holders of contracts with the Government to conduct a variety of research projects of far-reaching consequence to the national security. They are frequently petitioners for and recipients of substantial grants not directly related to national security but involving expenditure of tax revenues. Thus, there are various other valid reasons for a congressional committee to launch an investigation of the type being conducted when appellant appeared as a witness. Congress has the recognized authority to conduct inquiries to determine if projects crucial to national defense, and paid for from public funds, are being carried forward with dispatch and in a manner consonant with safeguarding those projects from those whom Congress might regard as subversive or potential enemies. Therefore, it [fol. 445] is important for Congress to know the methods, nature and extent of communist infiltration of colleges and universities which are or might become engaged in secret defense projects.

[11] 38 U.S.C. § 933.

IV

Appellant's final contention is that the resolution establishing the Committee on Un-American Activities and conferring on it jurisdiction to make investigations is, on its face, contrary to the First and Fifth Amendments to the Constitution of the United States. This very contention has been urged upon this and other courts and has been consistently rejected.[12]

It is urged that a committee of Congress has no constitutional authority to require an answer of a witness as to his political beliefs and associations. In *Quinn* v. *United States*, 349 U.S. at 160-161, the Supreme Court said:

> "There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate. Without the power to investigate—including of course the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.
>
> "But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs *unrelated to a valid legislative purpose*. . . ." [Emphasis supplied.]

[fol. 146] From this, it appears that if there is a valid legislative purpose, then, as was held in *Barsky*,[13] Congress can inquire into "private affairs" and, of course, political views and associations. If Congress can legislate against

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[12] *Marshall* v. *United States*, 85 U.S.App.D.C. 184, 176 F.2d 473 (D.C.Cir. 1949), *cert. denied*, 339 U.S. 933 (1950); *Dennis* v. *United States*, 84 U.S.App.D.C. 31, 171 F.2d 986 (D.C.Cir. 1949), *aff'd*, 339 U.S. 162 (1950); *United States* v. *Josephson*, 165 F.2d 82 (2d Cir. 1947), *cert. denied*, 333 U.S. 838 (1948); and cases cited notes 5 and 10 *supra*.

[13] *Barsky* v. *United States*, note 3 *supra*.

a threat of communism which is reasonably apprehended, it can, consistently with the meaning of the Constitution and the language in the *Quinn* case quoted above, inquire of a witness whether or not he is a communist, subject to the constitutional limitations imposed by the privilege against self-incrimination.

We said in *Barsky*:

> "... We think that inquiry into threats to the existing form of government by extra-constitutional processes of change is a power of Congress under its prime obligation to protect for the people that machinery of which it is a part, and inquiry into the desirability vel non of other forms of government is a power of Congress under its mandate to initiate amendments if such become advisable.
>
> "...
>
> "If Congress has power to inquire into the subjects of Communism and the Communist Party, it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject. ..." 167 F.2d at 246.

Appellant asks that we re-evaluate *Barsky* bearing in mind that the subcommittee record indicates that appellant's participation, if any, in communist groups was confined to the intellectual and ideological realm and was not conspiratorial in nature. We reaffirm *Barsky*, and see nothing which places appellant beyond the ruling therein.

If the Haldane Club of the Communist Party, to which appellant allegedly belonged, was in fact principally a Marx-[fol. 447] ist study group and, as believed by the subcommittee, an adjunct of the Communist Party, we cannot say that the identity of its members and the extent and nature of their participation were not matters of legitimate concern to the subcommittee under its enabling resolution. Whether the Communist Party embraces not only conspiratorial groups but intellectual discussion groups as well, the relationship between them, the group most preva-

lent, and the extent to which an individual might participate in the activities of each, whether such groups operate within or are connected with public educational institutions, place the questions asked appellant clearly within the pale of valid inquiry.

Though we, of course, agree that Congress does not have a general power to inquire into political beliefs and associations, it does have that power where the answer to the question posed can be and is regarded by Congress as having value in the exercise of legislative duty. Congress can legislate on the internal security dangers it has declared to have arisen from the activities of the Communist Party in this country. It can and it has.

Our view of the record convinces us that the indictment was in no respect defective; that appellant either communicated or could have communicated all his objections to questions asked him and that the committee indicated his objections were untenable; that, if the committee was motivated in part by a purpose of exposure in calling appellant as a witness, it was also properly motivated by a desire for information which it reasonably believed would be helpful to it in the discharge of its duty to make legislative recommendations; and that the subject matter under investigation was not beyond the scope of permissible congressional inquiry under the committee's enabling resolution, which resolution is within its constitutional powers.

The conclusion dictated is that the judgment appealed from is correct and is therefore

Affirmed.

[fol. 448] APPENDIX

Hearings Before the House Committee on Un-American Activities, Communist Methods of Infiltration (Education), 83d Cong., 1st Sess. (1953), pp. 1-3.

Opening Statement of the Chairman, February 25, 1953

"Mr. Davis [the first witness called], it is our understanding that you are a member of the teaching profession. In opening this hearing, it is well to make clear to

you and others just what the nature of this investigation is.

"From time to time, the committee has investigated Communists and Communist activities within the entertainment, newspaper, and labor fields, and also within the professions and the Government. In no instance has the work of the committee taken on the character of an investigation of entertainment organizations, newspapers, labor unions, the professions, or the Government, as such, and it is not now the purpose of this committee to investigate education or educational institutions, as such. The committee will follow its long-established policy of investigating Communists and Communist activities wherever it has substantial evidence of its existence.

"When investigating Communists and Communist activities within certain labor unions, the committee was met with the charge by alarmists and partisans within that field that the committee was a group of Fascists and the enemy of labor, and that the real purpose of the investigation was to destroy labor unions. Similar and equally unfounded charges have been made with regard to this hearing. In pursuing its work within the field of labor, the committee carefully refrained from taking any part in any internal disputes within labor or any disputes between employers and employees and confined its activities to the ascertainment and identification of leaders in the labor unions who were members of the Communist Party and [fol. 449] were using their influence to promote the objectives of the Communist Party within the field of labor, and to the character, extent, and objects of their Communist Party activities. The work of the committee in this respect has met with such growing success that many labor unions are now actively engaged in eliminating from positions of influence union officials known to be members of the Communist Party and engaged in Communist activities.

"The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field.

"The committee is charged by the Congress with the responsibility of investigating the extent, character, and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"It has been fully established in testimony before congressional committees and before the courts of our land that the Communist Party of the United States is part of an international conspiracy which is being used as a tool or weapon by a foreign power to promote its own foreign policy and which has for its object the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence, if necessary. This organization cannot live except by the promulgation and diffusion of subversive and un-American propaganda and in the view of this committee every person who remains a member of it is contributing to the ultimate accomplishment of its objectives. Communism and Communist ac- [fol. 450] tivities cannot be investigated in a vacuum. The investigation must, of necessity, relate to individuals and, therefore, this morning the committee is calling you as a person known by this committee to have been at one time a member of the Communist Party.

"The question is sometimes asked whether it is necessary to call as witnesses those who are no longer members of the Communist Party. It is quite obvious for a number of reasons that the answer should be 'Yes.' Such witnesses add immeasurably to the sum total of the knowledge of the character, extent, and objects of Communist activities. The testimony of former Communist Party members resulted virtually in immobilizing the Communist Party in Hollywood. These witnesses considered it their patriotic duty to answer under oath questions relating to their knowledge of Communist infiltration into the organizations of which they had been members, and to their knowledge of other Communist Party activities. Wit-

nesses from the Screen Writers' Guild, the directors' guilds, labor unions, the legal profession, the medical profession, and other groups have made a great contribution to the defense of their country by disclosing to this committee facts within their knowledge.

"Former Communist Party membership, in the view of the committee, should not be held against an individual whose testimony admitting former Communist Party membership has that character of trustworthiness which convinces one that he has completely and finally terminated his Communist Party membership and has been given in all good faith. It is of great aid in determining who remain in the Communist Party to ascertain who have left it.

"The committee was greatly concerned with the evidence developed in the Hollywood hearings with respect to the type of 'thought control' practiced by the Communist Party upon its members. Screen writers were told how and what they should write. The testimony of Budd Schulberg and [fol. 451] Edward Dmytryk demonstrate the point as clearly as laboratory experiments would prove a chemical reaction. The same influence was found to exist in the field of art and music. An objective study of this testimony will lead to the inescapable conclusion that it is the Communist Party which is the enemy of academic freedom.

"The committee is equally concerned with the opportunities that the Communist Party has to wield its influence upon members of the teaching profession and students through Communists who are members of the teaching profession. Therefore, *the objective of this investigation is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.*" [Emphasis supplied.]

[fol. 452] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,327

Criminal 1154-54

LLOYD BARENBLATT, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeal From the United States District Court for the District of Columbia.

Before: Washington, Bastian and Burger, Circuit Judges.

JUDGMENT—Dated: January 3, 1957

This Cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On Consideration Whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Circuit Judge Bastian.

[fol. 453] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 454] [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

No. 742, October Term, 1956

No. 13,327

LLOYD BARENBLATT, Petitioner,

v.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

This Cause came on to be heard on the transcript of the record from the United States Court of Appeals for the District of Columbia Circuit, and was duly submitted.

On Consideration Whereof, It is ordered and adjudged by this Court that the judgment of the said United States Court of Appeals, in this cause, be, and the same is hereby, vacated; and that this cause be, and the same is hereby, remanded to the United States Court of Appeals for the District of Columbia Circuit for consideration in light of Watkins v. United States, No. 261, October Term, 1956, decided June 17, 1957.

June 24, 1957

Mr. Justice Clark dissents for the reasons stated in his dissenting opinion in Watkins v. United States, supra.

Mr. Justice Burton took no part in the consideration or decision of this case.

A true copy, Attest: John T. Fey, Clerk of the Supreme Court of the United States, by R. J. Blanchard, Deputy.

July 23, 1957.

[fol. 455] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,327

LLOYD BARENBLATT, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

On reargument of appeal from the United States District Court for the District of Columbia pursuant to remand by the Supreme Court of the United States.

Mr. David Scribner, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of Court, with whom *Mr. David Rein* was on the brief, for appellant.

Mr. William Hitz, Assistant United States Attorney, with whom *Messrs. Oliver Gasch*, United States Attorney, *Lewis Carroll, John D. Lane* and *Harold D. Rhynedance, Jr.*, Assistant United States Attorneys, were on the brief, for appellee.

Before EDGERTON, Chief Judge, and PRETTYMAN, WILBUR K. MILLER, BAZELON, FAHY, WASHINGTON, DANAHER, BASTIAN and BURGER, Circuit Judges.

OPINION—Decided January 16, 1958

BASTIAN, *Circuit Judge*: On January 3, 1957, this court affirmed the conviction of Barenblatt on the charge of contempt of Congress.[1] Petition for certiorari was duly filed [fol. 456] in the Supreme Court and on June 24, 1957, the following *per curiam* order was entered:[2]

[1] 100 U.S.App.D.C. 13, 240 F.2d 875 (1957).

[2] 354 U.S. 930 (1957).

"The petition for writ of certiorari in this case is granted. The judgment of the Court of Appeals for the District of Columbia Circuit is vacated and the case is remanded for consideration in light of *Watkins* v. *United States;* 354 U.S. 178."

The present opinion is written in obedience to the above order.[3]

The facts concerning this case are sufficiently stated in the opinion of this court dated January 3 and need not be repeated here. Also, we limit ourselves to the directions of the Supreme Court and consider only the impact of *Watkins* on the instant case, except that we have also weighed the applicability of *Sweezy* v. *New Hampshire, infra.*

The Supreme Court in *Watkins* held that the witness there was not accorded a fair opportunity to determine whether he was within his rights in refusing to answer the questions involved and therefore his conviction was invalid under the Due Process Clause of the Fifth Amendment; and that no clear understanding of the question under inquiry could be gathered from the resolution setting up the Standing Committee on Un-American Activities, from the action of that Committee in authorizing the creation of the Subcommittee before which Watkins appeared, from the statement of the chairman at the opening of the hearings at which Watkins appeared, or from the statement of the chairman in response to Watkins' protest.

At the hearing before us on remand two points are mainly relied upon by appellant: First, it is claimed that [fol. 457] the opinion of the Supreme Court in *Watkins* struck down the resolution creating the Standing Committee on Un-American Activities (hereinafter referred to as the Committee), and that prosecution based on refusal to answer questions asked by the Committee or a Subcommittee questioning thereunder must necessarily fail in that the resolution on which the indictment is based fails to meet the requirements of due process; and second,

[3] Although *Barenblatt* v. *United States, supra* note 1, was heard in this court before a division of three judges, we *sua sponte* determined to hear the case on remand *en banc.*

assuming this was not the case, that part of the opinion in *Watkins* relating to pertinency is dispositive of the present case.

As to the first point, such infirmity of the resolution as may be said to exist does not affect the indictment and, in any event, is a matter of affirmative defense. It is quite true that the Supreme Court in no uncertain terms criticised the resolution creating the Committee for lack of specificity, for uncertainty, for vagueness, and the scope of the construction accorded to the resolution as acted upon by the members of the Committee and its Subcommittees. It would serve no useful purpose to review in detail all the criticisms directed by the Supreme Court to the resolution and the construction placed thereon by the Committee and its Subcommittees as they were constituted over the fifteen years of their existence; but in the margin are contained certain of the comments thereon by the Supreme Court.[1]

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[1] "It would be difficult to imagine a less explicit authorizing resolution." 354 U.S. 178, at 202.

". . . . An excessively broad charter, like that of the House Un-American Activities Committee, places the courts in an untenable position if they are to strike a balance between the public need for a particular interrogation and the right of citizens to carry on their affairs free from unnecessary governmental interference. It is impossible in such a situation to ascertain whether any legislative purpose justified the disclosures sought and, if so, the importance of that information to the Congress in furtherance of its legislative function. The reason no court can make this critical judgment is that the House of Representatives itself has never made it. Only the legislative assembly initiating an investigation can assay the relative necessity of specific disclosures." *Id.* at 205-206.

But the Court added

"". . . . Applied to persons prosecuted under § 192 [2 U.S.C.], this raises a special problem in that the statute defines the crime as refusal to answer 'any question pertinent to the question under inquiry.' Part of the standard of criminality, therefore, is the pertinency of the questions propounded to the witness." *Id.* at 208. ". . . . It is obvious that a person compelled to make this choice is entitled to have knowledge of the subject to which the interrogation is deemed pertinent. That knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires

[fol. 458] Against the background of its views so voiced, the Court considered, in terms presently relevant, the relationship of congressional investigating committees and the witnesses who appear before them. The opinion in *Watkins* clearly describes five criteria by which the pertinence of a question can be made clear to a witness (354 U.S. 178, 209, 211, 212, 213, 214): (1) the authorizing reso-
[fol. 459] lution, (2) opening remarks of the chairman, members, or counsel of the Committee, (3) the nature of the proceedings, (4) the questions themselves, and (5) the chairman's response to an objection on pertinency.

There are several reasons which we believe militate against the conclusion urged by appellant in this case that the resolution itself was struck down and that, consequently, the prosecution based on failure to answer questions propounded by the Subcommittee was fatally defective.

In the first place, we believe that if the Court had intended to strike down the resolution, it would have said so in so many words. It would not have left so vital an issue to inference or interpretation. The far-reaching result of such a holding would be that the Committee, established by action of the entire House of Representatives, would be rendered helpless and would not even be able to summon a witness, much less have him testify. Nothing less would be an immediate consequence. Certainly nowhere in the *Watkins* opinion does the Court use language essential to effectuate the result contended for by appellant and, on remand,

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in the expression of any element of a criminal offense. The 'vice of vagueness' must be avoided here as in all other crimes. *There are several sources that can outline the 'question under inquiry' in such a way that the rules against vagueness are satisfied. The authorizing resolution, the remarks of the chairman or members of the committee, or even the nature of the proceedings themselves, might sometimes make the topic clear.* This case demonstrates, however, that *these sources* often leave the matter in grave doubt." *Id.* at 208-209. (Emphasis added.)

This indicates to us that it is possible for the Committee itself or the nature of the proceedings themselves "to make the topic clear," *i.e.*, so to outline the question under inquiry as to satisfy the rules against vagueness. The Court found that Watkins had no such guide.

there is no such direction to us to strike down the resolution or to hold invalid the indictment brought for failure to answer questions pertinent to the subject under inquiry. In the absence of a clear expression from the Court we do not take this position.

In the second place, had the Supreme Court struck down the resolution creating the Committee the matter would have been ended, without the further, extended discussion found in *Watkins*. We cannot assume the rest of the opinion to be, nor do we read it as, mere dictum. On the contrary, it is clear the Court was familiar with the present case as it is specifically referred to in note 34 of the opinion in *Watkins*. The Court certainly knew, therefore, that Barenblatt's conviction grew out of testimony taken under the [fol. 460] same resolution. Moreover, it is reasonable to assume that, had the resolution under which both Watkins and Barenblatt were questioned been stricken in its entirety, this case would have been *reversed* on authority of *Watkins* rather than *remanded* for consideration "in light of" that opinion. We read *Watkins* as demonstrating the necessity of more than ordinary caution in upholding First Amendment rights of individuals who are summoned before committees or subcommittees which operate under resolutions infected with the vagueness criticized in *Watkins*.

We do believe that the Supreme Court was of the opinion that the vagueness of the resolution made it necessary, and only fair, that the witness be apprised of the particular matter under inquiry by the Committee or Subcommittee holding the hearings, and, on objection, of the pertinency of the questions involved in the inquiry.

Thirdly, the Supreme Court cited in *Watkins* a number of cases, both in that Court and in Courts of Appeals, bearing on convictions sustained under the same resolution.[5] There is no suggestion that those decisions were repudiated

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[5] See, among others, *Quinn* v. *United States*, 349 U.S. 155 (1955); *United States* v. *Bryan*, 339 U.S. 323 (1950); *Barsky* v. *United States*, 83 U.S.App.D.C. 127, 167 F.2d 241, *cert. denied*, 334 U.S. 843 (1948), *rehearing denied*, 339 U.S. 899 (1950); *United States* v. *Josephson*, 165 F.2d 82 (2d Cir. 1947), *cert. denied*, 333 U.S. 838, *rehearing denied*, 333 U.S. 858, *motion for leave to file second petition for rehearing denied*, 335 U.S. 899 (1948).

or that their reasoning was erroneous. One finds no intimation that the cases should have been decided by the simple process of voiding the resolution establishing the Committee. We are of clear opinion that *Watkins* did not void H. Res. 282, 75th Cong., 3d Sess., or H. Res. 5, 79th Cong., 1st Sess.[6]

Apart from our present review in light of *Watkins*, we have reconsidered the case also in light of *Sweezy* v. *New* [fol. 461] *Hampshire*, 354 U.S. 234 (1957). Appellant argues that there the Court emphasizes by analogy the fallibility of the resolution creating the Committee. Sweezy refused to answer questions in the course of an investigation by the State Attorney General acting under a resolution of the State Legislature relating to subversive activities. The Supreme Court there held that the investigation had deprived Sweezy of due process of law under the Fourteenth Amendment, and concluded that the record did not sustain the power of the State of New Hampshire to compel the disclosures that the witness refused to make. At the outset of the hearing, Sweezy had raised the question of pertinency as well as the question of violation of First Amendment rights. The Court further pointed out that there was no assurance that the legislature wanted answers to certain questions asked by the Attorney General, to whom the legislature had delegated the duty of making the investigation.

We think that *Sweezy* does not compel us to hold, under the circumstances of the instant case, that any of appellant's constitutional rights were violated.

In the *Watkins* case, having held that the resolution was not sufficiently specific, standing alone, to advise the witness of the question under inquiry, or at least having expressed doubt, the Supreme Court considered whether the statement of the chairman of the Subcommittee was sufficient to apprise Watkins of the matter under inquiry and whether, when Watkins objected to the questions on the ground of pertinency, the chairman's response was adequate to convey sufficient information on this point. The Court observed that that statement was nothing more

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[6] *Watkins*, notes 35, 36.

than a paraphrase of the resolution itself and gave Watkins insufficient information concerning the subject under inquiry. The investigation there was in connection with communist infiltration in labor and the Court found that a majority of the witnesses were not connected with labor at all, and that seven of the thirty persons whose names [fol. 462] were propounded to Watkins had no such connections. The Court wrote that the "inference becomes strong that the subject before the Subcommittee was not defined in terms of communism in labor," and concluded that the question under inquiry was not adequately revealed to Watkins when he had to decide, at his peril, whether or not to answer. The Court declared that "fundamental fairness demands that no witness be compelled to make such a determination with so little guidance."

The Watkins situation is a far cry from that of Barenblatt. The record here discloses that at the opening of the hearings before the Subcommittee on February 25, 1953, the chairman made a statement of the purpose of the inquiry,[1] the concluding part of which reads as follows:

> "*[T]he objective of this investigation is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.*" (Emphasis added.)

Comparison of this statement with the initial statement of the chairman discussed in the Watkins case, found by the Court to be insufficient, suggests a like infirmity. So regarded, we put aside the chairman's statement as a factor even though the fact that Barenblatt had prepared his statement as to his objections to the jurisdiction of the Committee (*infra*, pp. 299, *et seq*) indicates that he quite well knew the nature of the hearing.

We examine the record then from other approaches. It appears that Barenblatt was summoned to appear before the Subcommittee at 10:30 A.M. on June 28, 1954, and that

[1] The entire statement is quoted as an appendix to the opinion of this court dated January 3, 1957.

the session was called to order at 10:37 A.M. It may be presumed that Barenblatt was then present since there is no suggestion that he failed to obey the subpoena. At [fol. 463] no time during the present hearing, or in the District Court, was it claimed that Barenblatt was not present when committee counsel, that day, made his statement as to the purpose of the hearing. As a matter of fact, it is not denied even at this time that Barenblatt was then present. In addition also is the fact that Barenblatt testified that he had heard the testimony of Crowley, the first witness called.

Included in the statement of committee counsel at the June 28, 1954, hearing was the following:

> "The field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York."[8]

The question under inquiry was clearly indicated to the witnesses that day. From what we have said, as well as from what follows in his own testimony, it may fairly be inferred that Barenblatt was present and received the same information.

The next standard discussed by the Supreme Court is the nature of the proceedings. Barenblatt testified the same day as did Crowley, who identified him (Barenblatt) as a member of the Haldane Club of the Communist Party at the University of Michigan. Some of the other witnesses who testified were members of the Communist Party and others, including Barenblatt, were charged with being members of the Communist Party while at the University of Michigan several years before the hearings. All questions related to communist activity at the university, and it is clear that Barenblatt had knowledge that this was the subject matter being inquired into. We are of opinion that the nature of the proceedings, which Barenblatt personally observed, clearly indicated to him the question under inquiry.

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[8] 240 F.2d at 881, note 8.

[fol. 464] The next standard discussed by the Supreme Court was the nature of the questions as put.[9] Here, Barenblatt was asked specifically about his membership in the Haldane Club of the Community (sic) Party while he attended the University of Michigan and was a student of the University of Michigan Council of Arts, Sciences, and Professions. These questions, and the balance of the questions forming the basis of the indictment, viewed in the light of what the committee counsel had said and Crowley's preceding testimony, all in Barenblatt's presence, made indubitably clear to Barenblatt the nature of the subject under inquiry to which the questions were directed.

The record of the hearing, at which Barenblatt appeared and during which the questions in controversy were asked, is devoid of any objection interposed on the ground of pertinency. Indeed, every indication is that he came prepared to refuse to answer any questions of moment—pertinent or not. He appeared before the Subcommittee accompanied by counsel and armed with an eleven-page prepared, written statement entitled "Objections to Jurisdiction of the Committee on Un-American Activities and to Questions Propounded by It," objecting "not only to the jurisdiction of the committee, but also to the questions propounded by it. This objection [the statement continues] is made upon advice of counsel as to my rights as provided for in rule VII of the rules of procedure of this committee. Counsel who appear for me are Philip Wittenberg and Irving Like of 70 West 40th Street, Borough of Manhattan, New York City."

The statement can best be described as a lengthy legal brief attacking the jurisdiction of the committee to ask [fol. 465] appellant any questions or to conduct any inquiry at all, based on the First, Ninth and Tenth Amendments, the prohibition against bills of attainder, and the doctrine of separation of powers. This brief cited more than twenty Supreme Court decisions, some of which do not

[9] The Supreme Court in *Watkins* said (p. 213): "The most serious doubts as to the Subcommittee's 'question under inquiry,' however, stem from the precise questions that petitioner has been charged with refusing to answer. Under the terms of the statute, after all, it is these which must be proved pertinent."

concern the congressional power of investigation; and, in several instances, dissenting opinions were cited. Included in this statement are the following:

"1. I, Lloyd Barenblatt, having been subpenaed before the Committee on Un-American Activities, by subpena dated the 28th day of May 1954, returnable on the 28th day of June 1954, hereby respectfully object to the power and jurisdiction of this committee to inquire into—

(a) My political beliefs;

(b) My religious beliefs;

(c) Any other personal and private affairs;

(d) My associational activities.

"2. I am a private citizen engaged in work in the fields of education and research, and in writing and speaking in connection therewith. I hold no office of public honor or trust. I am not employed by any governmental department. I am not under salary or grant from any governmental department.

"3. The grounds of my objection are as follows:

"A. Any investigation into my political beliefs, my religious beliefs, any other personal and private affairs, and my associational activities, is an inquiry into personal and private affairs which is beyond the powers of this committee.

* * * * *

"D. Under our Constitution our Government is a government of limited powers, tripartite in form, consisting of the legislative, the judicial, and the executive. This separation is fundamental to the preservation of the rights of the people in order that no one department may, through its power, rise to become a despotic arbiter. This committee through this investigation into my political, associational, religious; [fol. 486] and private affairs trespassed upon the judicial department and has caused a lack of balance of power which constitutes a threat to my liberty as

an American citizen and is an unconstitutional usurpation.

* * * *

"This committee, by compelling me to leave my ordinary pursuits and to attend before it for the purpose of testifying with regard to my political beliefs, my religious beliefs, other personal and private affairs, and my associational activities, is acting as a judicial indicting and accusatory power. It is intruding into the judicial sphere and is following a practice which closely parallels the practices which resulted in bills of attainder being prohibited by our Constitution (art. I, sec. 10).

* * * *

"Upon all the grounds aforesaid I object not only to the jurisdiction of this committee, but also to the questions propounded by it. This objection is made upon the advice of counsel as to my rights as provided for in rule VII of the rules of procedure of this committee."

To indicate the length to which the Subcommittee went to indicate to Barenblatt the pertinency of the questions, even though the question of pertinency was not raised by him, we quote from the record of Hearings before the Committee on Un-American Activities, House of Representatives, 83rd Congress, 2d Session, Communist Methods of Infiltration (Education—Part 9, pp. 5813-14):

"Mr. Doyle [Representative Doyle]. Mr. Chairman, I think the record should show that at this time there are pending before the United States Congress several active bills dealing with the question of subversive activities, dealing with the question of the Communist Party, dealing with the question of the responsibility that we have as a congressional committee under Public Law 601.

"I am sure that is the record, and I would like the [fol. 467] record of this hearing of this committee to especially show it—

"Mr. Velde [Representative Velde]. Yes, I think—

"Mr. Doyle (continuing). And that this witness and these other witnesses could help us in line with our Public Law 601 responsibility to have hearings with reference to recommendations for legislation in this area under Public Law 601 in accordance therewith.

"Mr. Velde. I concur with you, Mr. Doyle, and I wish to further state that the record should show that the evidence or information contained in the files of this committee, some of them in the nature of evidence, shows clearly that the witness has information about Communist activities in the United States of America, particularly while he attended the University of Michigan.

"That information which the witness has would be very valuable to this committee and its work.

"It is the opinion of the committee, at least the Chair, that the committee has a constitutional legal right in all ways and forms and means to get the information which has been requested from the witness."

Whenever appellant was asked a question which he refused to answer, he asked permission, or attempted without permission, to read the prepared statement. That statement, which was inserted in the record of the hearing at which Barenblatt testified, in no way indicates that he had any doubt as to the subject under inquiry or as to the pertinency of the questions asked. On the contrary, everything points to Barenblatt's knowledge of the subject and his knowledge of the pertinency of the questions asked. Refusal to answer was based on the broad grounds above set forth. He specifically disclaimed invoking the Fifth Amendment.

Applying the *Watkins* ruling to this case, it will be seen that there is decisive distinction between the two. In the present case the subject of the investigation was stated to be Communist Party activities within the field [fol. 468] of education. There was no attempt made to proceed with the hearing under a mere re-hash of the resolution creating the Committee. Here was far more than "a very general sketch of the past efforts of the Committee," as the Supreme Court said in *Watkins*.

While Watkins testified freely as to his own activities, he simply declined to identify members who he believed had perhaps innocently become members of or were closely connected with the Communist Party and who had subsequently withdrawn therefrom. Barenblatt, however, declined to answer either as to his own activities or the activities in general of the Haldane Club. He was represented by counsel, and presented written objections based generally on the jurisdiction of the Committee. His objections went to questions about his own activities and acts and were on specific grounds. These objections are sufficiently described in our previous opinion.

We have considered the other questions raised by appellant on remand and which he says are material here in the light of *Watkins*. We think such other matters are sufficiently answered by the original opinion of this court, which by reference, for present purposes, is incorporated herein.

We are of opinion that, under the standards laid down for us by the Supreme Court, Barenblatt was made fully aware of the subject under inquiry and was in a position to judge the pertinency of the questions relating to that subject. We are further of the opinion that the questions were in fact relevant and pertinent to that subject.

In accordance with the direction of the Supreme Court, we have carefully considered *Watkins* and its impact on *Barenblatt*. Taking account of all circumstances as noted, and believing the cases are distinguishable as indicated, we affirm the judgment of conviction.

Affirmed.

[fol. 469] EDGERTON, *Chief Judge*, whom BAZELON, *Circuit Judge*, joins, *dissenting*: A unanimous panel of this court decided that "the opinion of the Supreme Court in Watkins v. United States . . . requires reversal" of the conviction of Singer.[1] Barenblatt, like Singer, was convicted of refusing to answer questions of a subcommittee of the Un-

[1] *Singer* v. *United States*, —— U.S.App.D.C. ——, 247 F.2d 535; reversing *Singer* v. *United States*, 100 U.S.App.D.C. 260, 244 F.2d 349, which had affirmed *Singer* v. *United States*, 139 F.Supp. 847 (D.C.D.C.).

American Activities Committee investigating Communists in the field of education. There is no difference pertinent to *Watkins* between Singer's case and Barenblatt's. I think this court errs in overruling our *Singer* decision.

I understand *Watkins* to hold that the Committee on Un-American Activities had no authority to compel testimony because it had no definite assignment from Congress. The Supreme Court said: "[W]hen First Amendment rights are threatened, the delegation of power to the Committee must be clearly revealed in its charter. [354 U.S. at p. 198] . . . An essential premise in this situation is that the House or Senate shall have instructed the Committee members on what they are to do with the power delegated to them. . . . [T]he responsibility of the Congress . . . to insure that compulsory process is used only in furtherance of a legislative purpose . . . requires that the instructions to an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity. [p. 201] . . . It would be difficult to imagine a less explicit authorizing resolution. [p. 202] . . . Combining the language of the resolution with the construction it has been given, it is evident that the preliminary control of the Committee exercised by the House of Representatives is slight or non-existent. No one could reasonably deduce from the charter the kind of investigation that the Committee was directed to make. [pp. 203-4] . . . The Com- [fol. 470] mittee is allowed, in essence, to define its own authority . . . [This] can lead to ruthless exposure of private lives in order to gather data that is neither desired by the Congress nor useful to it. . . . Protected freedoms should not be placed in danger in the absence of a clear determination by the House or the Senate that a particular inquiry is justified by a specific legislative need. . . . An excessively broad charter, like that of the House Un-American Activities Committee, places the courts in an untenable position . . . . [p. 205] It is impossible in such a situation to ascertain whether any legislative purpose justifies the disclosures sought . . . . The reason no court can make this critical judgment is that the House of Representatives itself has never made it. . . . Plainly these committees are restricted to the missions delegated to them, *i.e.*, to acquire

certain data to be used by the House or the Senate in coping with a problem that falls within its legislative sphere. No witness can be compelled to make disclosures on matters outside that area." [p. 206]

In summary: (1) The "instructions to an investigating committee [must] spell out that group's jurisdiction and purpose with sufficient particularity." (2) "It would be difficult to imagine a less explicit authorizing resolution . . . . No one could reasonably deduce from the charter the kind of investigation that the Committee was directed to make." (3) "No witness can be compelled to make disclosures on matters outside that area." Since Congress did not define that area, there can be no proof that the Committee's questions were within it. It follows that the defendant must be acquitted.

Even if, contrary to my clear understanding of *Watkins*, Congress did "with sufficient particularity" authorize the Committee to investigate something, it by no means follows that Congress authorized the Committee to investigate Communists in the field of education. Four Justices of the Supreme Court recently said: "It is particularly [fol. 471] important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas, particularly in the academic community. . . . [T]he areas of academic freedom and political expression" are "areas in which government should be extremely reticent to tread." Two other Justices said in the same case: "These pages need not be burdened with proof, based on the testimony of a cloud of impressive witnesses, of the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university." *Sweezy* v. *New Hampshire*, 354 U.S. 234, 245, 250, 262. The Court there held that Sweezy, a university teacher, could not constitutionally be required to answer certain questions about his political activities and connections. Barenblatt was a university teacher. He was convicted because he would not answer certain questions about his political activities and connections. Though the

two cases are not identical and *Sweezy* does not prove that Barenblatt's conviction violates his constitutional rights, it does show that this conviction raises serious constitutional questions. Delegation of power to a congressional committee must be construed narrowly when a narrow construction avoids serious constitutional questions. *United States* v. *Rumely*, 345 U.S. 41. The words of the Committee's charter, "investigations of . . . un-American propaganda activities", need not and therefore should not be interpreted to authorize the Committee to select for investigation political activities and connections of university teachers. We must suppose that if Congress had intended to authorize such an investigation it would have done so explicitly.

We need not consider whether the Committee's questions to Barenblatt were pertinent to an investigation of Communists, in the field of education. The force of the [fol. 472] Court's decision in *Watkins* that the Committee had no definite assignment, and therefore no authority to compel testimony, is not destroyed by the Court's decision that the questions Watkins refused to answer were not clearly pertinent to the investigation in which the Committee was then engaged. "[W]here there are two grounds, upon either of which an appellate court may rest its decision, and it adopts both, 'the ruling on neither is *obiter*, but each is the judgment of the court and of equal validity with the other.'" *United States* v. *Title Ins. & Tr. Co.*, 265 U.S. 472, 486. And even if the Supreme Court's demonstration that the Committee on Un-American Activities had no authority to compel testimony were *obiter*, this court should defer to it.

Although, on examination, the answer to a question is plain, higher courts commonly require lower courts to make the examination and decide the question in the first instance. The Supreme Court followed the usual practice in this case.

FAHY, *Circuit Judge*, with whom WASHINGTON, *Circuit Judge*, joins, *dissenting*: Reading *Sweezy* in the light of *Rumely* and *Watkins*, I think the Committee could not proceed to investigate the field of education—at least with the use of compulsory process, under the sanction of contempt—without a more specific authorization than it had

been given, and that therefore the conviction must be reversed. It is unnecessary here to go into the question whether *Watkins* holds the Committee to be without authority to compel testimony on any subject of inquiry.

[fol. 473] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,327—October Term, 1957.

Criminal 1154-54

LLOYD BARENBLATT, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

On Reargument of Appeal from the United States District Court for the District of Columbia Pursuant to Remand by the Supreme Court of the United States.

Before: Edgerton, Chief Judge, and Prettyman, Wilbur K. Miller, Bazelon, Fahy, Washington, Danaher, Bastian and Burger, Circuit Judges.

JUDGMENT—January 16, 1958

Pursuant to the judgment of the Supreme Court of the United States dated June 24, 1957, this case came on to be reheard en banc on the record from the United States District Court for the District of Columbia and on the supplemental briefs and memoranda of the parties, and was reargued by counsel.

On Consideration Whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in this case be, and it is hereby, affirmed.

Dated: January 16, 1958.

Per Circuit Judge Bastian.

Separate dissenting opinion by Chief Judge Edgerton, with whom Circuit Judge Bazelon joins.

Separate dissenting opinion by Circuit Judge Fahy, with whom Circuit Judge Washington joins.

[fol. 474] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 475] SUPREME COURT OF THE UNITED STATES

No. 787, October Term, 1957

[Title omitted]

ORDER GRANTING MOTION TO USE THE RECORD ETC.—April 14, 1958

On Consideration of the motion to use record in Barenblatt v. United States, No. 742, October Term, 1956, in this case,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice Burton took no part in the consideration or decision of this motion.

[fol. 477] SUPREME COURT OF THE UNITED STATES

No. 787, October Term, 1957

[Title omitted]

ORDER ALLOWING CERTIORARI—April 14, 1958

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Burton took no part in the consideration or decision of this application.

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JOHN T. [illegible], Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. [redacted]35

LLOYD BARENBLATT,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND MOTION FOR LEAVE TO USE ORIGINAL RECORD

EDWARD J. ENNIS
OSMOND K. FRAENKEL
BARENT TEN EYCK
ROWLAND WATTS
c/o American Civil
Liberties Union
170 Fifth Avenue
New York 10, N. Y.

DAVID SCRIBNER
15 William Street
New York 5, N. Y.

Attorneys for Petitioner

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IN THE

Supreme Court of the United States

October Term, 1957

No. .....

LLOYD BARENBLATT,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND MOTION FOR LEAVE TO USE ORIGINAL RECORD

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above entitled case on January 16, 1958.

Motion for Leave to Use Original Record

The petitioner respectfully moves the Court for permission to use the original record filed in this Court in connection with the prior petition herein, No. 742, October Term, 1956, and presently on file in the Office of the Clerk. There is also filed in connection with this petition the record of the supplemental proceedings in the court below upon the

former remand of this case to the court below. 354 U. S. 930.

Opinions Below

The oral opinion of the District Court is unreported and is printed in Appendix B, *infra*, page 60. The opinion and order of the Court of Appeals entered on January 16, 1958, upon remand by this Court, 354 U. S. 930, is not yet officially reported and is printed in Appendix B, *infra*, page 19. The original opinion and order of the Court of Appeals dated January 3, 1957, from which petitioner petitioned for a writ of certiorari is reported in 240 F. 2d 875 and is printed in Appendix B, *infra*, page 39.

Jurisdiction

The opinion and judgment of the United States Court of Appeals was entered January 16, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1) and Rule 37(b)(2) of the Federal Rules of Criminal Procedure.

Questions Presented

1. Whether or not Congress, in the statute and resolution establishing the House Committee on Un-American Activities, authorized the Committee to make inquiry of petitioner in the field of education.

2. Whether the Committee received from Congress any definite assignment or sufficient authority to make an investigation in the field of education or otherwise.

3. Whether the statute and resolution establishing the Committee are unconstitutional on their face and as applied to petitioner in that they invade petitioner's constitutional

rights under the First Amendment in respect of his freedom of speech, political and academic association and communication; under the Fifth Amendment in that they provide a constitutionally vague and incomplete standard for inquiry and prosecution; under the Sixth Amendment in that they fail to inform him of the nature and cause of the accusation made against him; and under the Ninth and Tenth Amendments in that they invade rights and powers retained by the people and reserved to the people.

4. Whether the legislative inquiry and the resulting conviction were unconstitutional and unlawful because of an unlawful purpose to expose petitioner.

5. Whether the legislative inquiry and the resulting conviction were unconstitutional and unlawful because of the Committee's failure to apprise petitioner of the subject matter of the investigation and the pertinency of the inquiry to the investigation.

Constitutional and Statutory Provisions Involved

These are printed in the appendix, *infra*, page 16.

Statement

Petitioner, Lloyd Barenblatt, was convicted in the District Court for the District of Columbia under an indictment charging violation of 2 U. S. C. Section 192 for refusing to answer questions before a subcommittee of the House Committee on Un-American Activities. The indictment charged in substance that petitioner "unlawfully refused to answer" the following questions "pertinent to the question then under inquiry" before a subcommittee of the House Committee on Un-American Activities:

Count One: Are you now a member of the Communist Party?

Count Two: Have you ever been a member of the Communist Party?

Count Three: Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?

Count Four: Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?

Count Five: Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions?

For a four year period immediately prior to his appearance before the Un-American Committee, petitioner had been employed as an instructor in psychology at Vassar College. After he received the subpoena to appear before the Committee his contract with Vassar College expired and was not renewed. Prior to his association with Vassar College for the period 1947-1950, he had been at the University of Michigan in the Graduate School of Studies, studying for his doctorate in social psychology (Gov't Ex. 8, p. 5802).[1] During most of the period of his stay at the University he was a teaching fellow in psychology (Gov't Ex. 8, p. 5813).

Pursuant to subpoena, petitioner appeared and testified on June 28, 1954 in Washington, D. C. before a subcommittee of the House Committee on Un-American Activities. Four other witnesses had preceded him. He was the last witness on that day. Subsequently, in its official 1954 An-

[1] Government Exhibit 8 is the printed transcript of the hearings at which petitioner appeared.

nual Report to the House of Representatives, the Committee stated, with regard to the witnesses who testified that day:

> "The 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" (Gov't Ex. 10, p. 15).

The first witness who testified that day was Francis X. T. Crowley. Immediately before Mr. Crowley testified and after the composition of the committee was announced, the Chairman of the Committee asked the Committee counsel to explain the purposes "for this hearing this morning" (Gov't Ex. 8, p. 5753). In answer the Committee counsel stated:

> "The field covered will be in the main communism in education and the experiences and background in the party of Francis X. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York" (Gov't Ex. 8, p. 5754).

Crowley then testified, among other things, that he knew appellant when he was a graduate student at the University of Michigan. He further testified:

> "Mr. Kunzig: And you knew him to be a member of the Haldane Club in the Communist Party?
>
> Mr. Crowley: Yes, just the Haldane Club.
>
> Mr. Kunzig: The Haldane Club of the Communist Party, I should say.
>
> Mr. Crowley: Yes, and to my knowledge he left that and he left the University of Michigan.
>
> Mr. Kunzig: Do you know where he teaches at the present time, if he teaches?

Mr. Crowley: Yes, he is at Vassar. I would like to say, in fairness to him—

Mr. Kunzig: Any testimony you can give, we would be glad to have.

Mr. Crowley: Yes, that he expressed to me his opinion that he was pretty much of the same opinion that I was about membership in the party. I am convinced that he has left it, the Communist Party.

Mr. Kunzig: Your close knowledge of him was up to about 1950?

Mr. Crowley: Yes, I have seen him a few times since then, occasional visits" (Gov't Ex. 8, p. 5778).

In respect to the Haldane Club, Mr. Crowley testified that it was a group for graduate students and teaching fellows (Gov't Ex. 8, p. 5773). In answer to the question as to what sort of activities the Haldane group engaged in, he said:

"They were chiefly of an intellectual nature discussing things. It was mainly a discussion group. There were very little of the activity of the kind that Neafus engaged in, that is, running around the campus with petitions or things like that" (Gov't Ex. 8, p. 5774).

He also stated the following in respect to the Haldane Club:

"Mr. Velde: Did you study Marxism?

Mr. Crowley: Yes, pamphlets on Marxism. I forget which ones, but the discussion centered around, as I recall, literature and cultures, on the subjects of arts, the relation to communism of Marxism, what is the function of the artist in that respect.

The Haldane Club was chiefly an intellectual group, discussion group.

* * * * *

Mr. Velde: Do you feel that your colleagues had that idea, that they were engaged in a conspiracy?

Mr. Crowley: I am sure that the ones I knew did not have that notion. They were people who were mostly the intellectual type of people who were getting their feet wet on something or other. Some of them may have had that in their mind, but I never heard it expressed in terms of overthrowing anything. It was never expressed to me that way" (Gov't Ex. 8, pp. 5781-5782).

Petitioner was actually called to testify shortly before 4 o'clock and was the last witness that day. The subcommittee made no statement advising the petitioner of the purpose of the particular inquiry (Gov't Ex. 8, p. 5813).

Petitioner, in response to the questions upon which the indictment rests attempted to present orally a written statement of objections that he had prepared. These objections constituted his reasons for refusing to answer. They set forth the limitations upon the Congressional power of investigation and included the following excerpt from *Jones* v. *Securities Exchange Commission*, 298 U. S. 1:

"• • • The citizen when interrogated about his private affairs has a right before answering to know why the inquiry is made; and if the purpose disclosed is not a legitimate one, he may not be compelled to answer" (Gov't Ex. 8, pp. 5807-5808).

The subcommittee refused to hear these objections and indicated that it was only concerned with whether he was asserting his privilege against self-incrimination.

Proceedings Below

Petitioner's motion to dismiss the indictment for insufficiency was denied. The trial came before District Judge

Alexander Holtzoff on March 14, 1956 in the United States District Court for the District of Columbia. After some evidence had been presented to the jury, petitioner waived trial by jury (Tr. 146).* After trial defendant was adjudged guilty (Tr. 192) and sentenced to imprisonment for a period of six months and fined $250 (Tr. 199). During the course of the closing arguments, the court commented, "There is no contention he was disrespectful or contumacious except in a legal sense. There is no doubt about that" (Tr. 174).

A panel of the Court of Appeals upheld the conviction in an opinion and order dated January 3, 1957. It held that the law establishing the House Committee on Un-American Activities was constitutional and that "Courts must presume congressional investigations to have valid legislative purposes" (*infra*, p. 48). The court held that even if the sub-committee had also had the purpose in summoning Petitioner of "demonstrating" his "identity to the people of Michigan," that did not invalidate the questioning. It held that this Committee had power to inquire into the operations of a non-conspiratorial Marxist study group composed of graduate students at a university as a matter which the Committee can and did regard as having value in the exercise of its duty.

The court upheld the validity of the indictment. It upheld the subcommittee failure to consider and rule on Petitioner's written objections on the ground that he had been directed to answer and could have presented them orally.

A petition for certiorari was duly filed in the Supreme Court and on June 24, 1957, the following *per curiam* order was entered:

---

* Petitioner was granted leave to appeal to the Court of Appeals on the typewritten transcript. References preceded by "Tr." are to pages of the typewritten transcript.

"The petition for writ of certiorari in this case is granted. The judgment of the Court of Appeals for the District of Columbia Circuit is vacated and the case is remanded for consideration in the light of *Watkins* v. *United States*, 354 U. S. 178; 354 U. S. 930 (1957).

Upon remand the Court of Appeals, *en banc*, by a 5-4 court division entered its opinion and order January 16, 1958, sustaining the conviction. It held that while this Court in no uncertain terms criticized the resolution creating the Committee for lack of specificity, for uncertainty, for vagueness, and the scope of the construction accorded to the resolution as acted upon by the members of the Committee and its Subcommittees, that this Court had not in *Watkins* intended to strike down the resolution. The Court of Appeals further held that this Court in *Watkins* was of the opinion that the vagueness of the resolution made it necessary that the witness be apprised of the particular matter under inquiry by the Committee and, on objection, upon the pertinency of the questions involved in the inquiry. The Court of Appeals concluded that Petitioner was made fully aware of the subject under inquiry, was in a position to judge the pertinency of the questions relating to that subject and that the questions were in fact relevant and pertinent to that subject. The Court of Appeals held that the holding of this Court in *Sweezy* did not compel it to rule that any of appellant's constitutional rights were violated.

Chief Judge Edgerton in a dissenting opinion joined by Judge Bazelon stated: "I understand *Watkins* to hold that the Committee on Un-American Activities had no authority to compel testimony because it had no definite assignment from Congress" and that "even if, contrary to my clear understanding of *Watkins*, Congress did 'with sufficient

particularity" authorize the Committee to investigate something, it by no means follows that Congress authorized the Committee to investigate Communists in the field of education." Judge Fahy in a dissenting opinion joined by Judge Washington stated: "Reading *Sweezy* in the light of *Rumely* and *Watkins*, I think the Committee could not proceed to investigate the field of education—at least with the use of compulsory process, under the sanction of contempt—without a more specific authorization than it had been given, and that therefore the conviction must be reversed. * * * "

REASONS FOR GRANTING THE WRIT

I.

Congress did not authorize the Committee's inquiry of petitioner in the field of education.

The Court of Appeals, nine Circuit Judges sitting *en banc*, divided five judges to four judges on the meaning of this Court's decision in *Watkins* v. *United States*, 354 U. S. 178 read together with *Sweezy* v. *New Hampshire*, 354 U. S. 234, decided together on June 17, 1957. The majority of five judges held that this Court in *Watkins*, did not hold the enabling resolution insufficient to make the inquiry which was made of the petitioner provided that the Committee sufficiently advised the petitioner of the nature of the inquiry so that he could determine the pertinency of the questions. The minority of the judges in two dissenting opinions ruled that *Watkins*, read with *Sweezy*, require a ruling that the Committee had not been authorized to make its investigation in the field of education. Two of the judges (Edgerton and Bazelon, *JJ.*) went further and stated that *Watkins* held that "the Committee on Un-American Activi-

ties had no authority to compel testimony because it had no definite assignment from Congress" (App. 34).

This petition should be granted because the decision below conflicts with the decisions of this Court in *Watkins* and *Sweezy* and authoritative judicial clarification is urgently needed for the administration of justice in the lower courts and as some standard of conduct for further activities of committees of Congress and to avoid the multiplicity of litigation which otherwise will result.[1]

II.

Congress did not authorize the Committee to make any inquiry.

The majority of the court below recognized that this Court in *Watkins* "in no uncertain terms criticized the resolution creating the Committee for lack of specificity, for uncertainty, for vagueness, and the scope of the construction accorded to the resolution as acted upon by the members of the Committee and its Subcommittees" (App. 21). The majority concluded, however, that this Court in *Watkins* "was of the opinion that the vagueness of the resolution made it necessary, and only fair, that the witness be apprised of the particular matter under inquiry" (App. 24) and that in effect the vagueness in the statutory grant of authority could be cured by statements of a committee seeking to exercise the authority. Judges Edgerton and Bazelon, as stated *supra*, dissented on the ground that *Watkins* held that the Committee had no authority to compel testimony because it had no definite assignment from Congress and ruled that the majority view actually overruled the same court's decision in *Singer* v. *United States*, 247 F. 2d 535 (C. A. D. C.). Judges Fahey and Washington

[1] Counsel is informed that in some of 9 similar cases pending in the Court below, applications are being made to postpone briefs and arguments until disposition of the instant case.

ruled that it was unnecessary to go into the question "whether *Watkins* holds the Committee to be without authority to compel testimony on any subject of inquiry" (App. 38).

The decision below conflicts with *Watkins* and a judicial determination of the Committee's authority is urgently needed to govern inquiries by the Committee and the administration of justice in criminal proceedings arising out of activities of the Committee.

III.

The statute and resolution authorizing the Committee are unconstitutional.

The statute and resolution, as construed by the majority of the court below to authorize the inquiry and as applied by the Committee to make the inquiry of petitioner resulting in his conviction, constitute an unconstitutional invasion of his freedom of speech, political and academic association and communication in violation of the First Amendment. *Sweezy* v. *New Hampshire, supra.* The petitioner adopts and urges upon this Court without repeating them here, the contentions set forth in the dissenting opinion of Circuit Judge Edgerton in *Barsky* v. *United States,* 167 F. 2d 241, cert. den. 334 U. S. 843, and in the dissenting opinion of Circuit Judge Clark in *United States* v. *Josephson,* 165 F. 2d 82, cert. den. 333 U. S. 838.

The statute and resolution, as applied in this case, also violate the prohibition of the due process clause of the Fifth Amendment against statutory vagueness. *Watkins* v. *United States, supra; Thornhill* v. *Alabama,* 310 U. S. 88; *Lanzetta* v. *New Jersey,* 306 U. S. 389; *Connally* v. *General Construction Co.,* 269 U. S. 385.

The statute and resolution, as applied in this case to investigate in the field of education and the teaching profession, violate the Ninth and Tenth Amendments as an attempted Congressional invasion of rights and powers retained by the people and reserved to the people. Cf. *United Public Workers* v. *Mitchell*, 330 U. S. 75, 94.

IV.

The legislative inquiry, and the resulting conviction, were unconstitutional and unlawful because of its unlawful purpose to expose petitioner.

The Committee on Un-American Activities in its Annual Report for 1954, in respect of its investigations in Michigan involved in this case, stated in part (Gov't Ex. 10, p. 15):

> "The 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success."

The Committee also noted that it "uncovered" Communist Party members in school systems of Detroit and elsewhere, that "most of the teachers called have been suspended or permanently removed from their positions" and that the Committee "approves of this action."

Thus the Committee officially evaluated its function as exposure of petitioner and other teachers. Moreover, in respect of petitioner, this official evaluation of the Committee's purpose was made specifically applicable by the Subcommittee urging the petitioner at his hearing to "come clean," "clean up" and "get out of that embarrassing situation" (Gov't Ex. 8, p. 5813).

On this record, in the light of *Watkins*, the presumption of legislative regularity is completely destroyed and the

inquiry and conviction of petitioner were illegal because of the attempted improper purpose of exposure.

V.

The inquiry, and the resulting conviction, were unlawful because of the Committee's failure to apprise petitioner of the pertinency of the inquiry.

At no time during petitioner's interrogation by the Subcommittee was the purpose or aim of the investigation for which he had been subpoenaed revealed to him. The statements by Representatives Doyle and Velde referred to by the court below as indicative of the pertinency of the inquiry (App. 31-32) were made after the petitioner's testimony was concluded and not before he was called for examination. These statements patently are too late to cure the defect and cannot be held to have put petitioner on notice of the nature of the inquiry. No other statements relating to the subject matter of the inquiry were made to petitioner.

The record establishes that the petitioner did object to the pertinency of the inquiry. Almost at the outset petitioner declined to answer questions as to his personal political views and opinions and stated:

> "I am a private citizen engaged in the field of education and research and in writing and speaking in connection therewith. I hold no office of public honor or trust. I am not under salary or grant to any governmental department" (Gov't Ex. 8, p. 5807).

Moreover, it was the Subcommittee's duty to reveal its purposes and the Subcommittee's failure cannot be construed as a waiver by the petitioner. A witness has a right to know why an inquiry is being conducted when asked

about his private affairs. *Jones* v. *Securities & Exchange Commission,* 298 U. S. 1, 26. The failure to disclose the subject matter of the investigation made it impossible for the petitioner to determine the pertinency of any of the questions put to him. Consequently the conviction violated petitioner's rights under the Fifth and Sixth Amendments and was not within the statute defining the offense as refusal "to answer any question pertinent to the question under inquiry" (2 U. S. C. 192).

CONCLUSION

For the foregoing reasons it is prayed that the motion for leave to use the original record and the petition for a writ of certiorari be granted.

Respectfully submitted,

EDWARD J. ENNIS
OSMOND K. FRAENKEL
BARENT TEN EYCK
ROWLAND WATTS
c/o American Civil
Liberties Union
170 Fifth Avenue
New York 10, N. Y.

DAVID SCRIBNER
15 William Street
New York 5, N. Y.

Attorneys for Petitioner

February 14, 1958

APPENDIX A

The constitutional, statutory provisions and rules involved read in relevant part:

CONSTITUTION OF THE UNITED STATES OF AMERICA

* * * * *

Article I, Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

* * * * *

Article II, Section 1. The executive power shall be vested in a President of the United States of America.

* * * * *

Article III, Section 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as Congress may from time to time ordain and establish.

* * * * *

Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

* * * * *

Amendment 5. No person shall * * * be deprived of life, liberty, or property without due process of law.

Amendment 6. In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation; * * *

Amendment 10. The powers not delegated to the United States by the Constitution, nor prohibited by it to the

states, are reserved to the states respectively, or to the people.

2 U. S. C. Section 192, R. S. 102, 52 Stat. 942), as amended:

"Refusal of witness to testify.

"Every person who having been summoned as a witness by the authority of either House or Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month or more than twelve months."

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828) and House Resolution 5 of the 83rd Congress:

"(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

"RULE XI

"*Power and Duties of Committees*

"(1) All proposed legislation, messages, petitions, memorials, and other matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively . . .

"(q)(1) Committee on Un-American Activities.

"(A) Un-American Activities.

"(2) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

Rule 7(c) of the Federal Rules of Criminal Procedure provides in relevant part:

"Rule 7. The indictment and the Information

(c) NATURE AND CONTENTS. The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. * * *"

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,327

LLOYD BARENBLATT,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Appellee.

On reargument of appeal from the United States District Court for the District of Columbia pursuant to remand by the Supreme Court of the United States.

Decided January 16, 1958

Mr. David Scribner, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of Court, with whom *Mr. David Rein* was on the brief, for appellant.

Mr. William Hitz, Assistant United States Attorney, with whom *Messrs. Oliver Gasch*, United States Attorney, *Lewis Carroll, John D. Lane* and *Harold D. Rhynedance, Jr.*, Assistant United States Attorneys, were on the brief, for appellee.

Before EDGERTON, Chief Judge, and PRETTYMAN, WILBUR K. MILLER, BAZELON, FAHY, WASHINGTON, DANAHER, BASTIAN and BURGER, Circuit Judges.

BASTIAN, *Circuit Judge*: On January 3, 1957, this court affirmed the conviction of Barenblatt on the charge of

contempt of Congress.[1] Petition for certiorari was duly filed in the Supreme Court and on June 24, 1957, the following *per curiam* order was entered:[2]

> "The petition for writ of certiorari in this case is granted. The judgment of the Court of Appeals for the District of Columbia Circuit is vacated and the case is remanded for consideration in light of *Watkins* v. *United States*, 354 U. S. 178."

The present opinion is written in obedience to the above order.[3]

The facts concerning this case are sufficiently stated in the opinion of this court dated January 3 and need not be repeated here. Also, we limit ourselves to the directions of the Supreme Court and consider only the impact of *Watkins* on the instant case, except that we have also weighed the applicability of *Sweezy* v. *New Hampshire*, *infra*.

The Supreme Court in *Watkins* held that the witness there was not accorded a fair opportunity to determine whether he was within his rights in refusing to answer the questions involved and therefore his conviction was invalid under the Due Process Clause of the Fifth Amendment; and that no clear understanding of the question under inquiry could be gathered from the resolution setting up the Standing Committee on Un-American Activities, from the action of that Committee in authorizing the creation of the Subcommittee before which Watkins

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[1] 100 U. S. App. D. C. 13, 240 F. 2d 875 (1957).

[2] 354 U. S. 930 (1957).

[3] Although *Barenblatt* v. *United States*, *supra* note 1, was heard in this court before a division of three judges, we *sua sponte* determined to hear the case on remand *en banc*.

appeared, from the statement of the chairman at the opening of the hearings at which Watkins appeared, or from the statement of the chairman in response to Watkins' protest.

At the hearing before us on remand two points are mainly relied upon by appellant: First, it is claimed that the opinion of the Supreme Court in *Watkins* struck down the resolution creating the Standing Committee on Un-American Activities (hereinafter referred to as the Committee), and that prosecution based on refusal to answer questions asked by the Committee or a Subcommittee questioning thereunder must necessarily fall in that the resolution on which the indictment is based fails to meet the requirements of due process; and second, assuming this was not the case, that part of the opinion in *Watkins* relating to pertinency is dispositive of the present case.

As to the first point, such infirmity of the resolution as may be said to exist does not affect the indictment and, in any event, is a matter of affirmative defense. It is quite true that the Supreme Court in no uncertain terms criticised the resolution creating the Committee for lack of specificity, for uncertainty, for vagueness, and the scope of the construction accorded to the resolution as acted upon by the members of the Committee and its Subcommittees. It would serve no useful purpose to review in detail all the criticisms directed by the Supreme Court to the resolution and the construction placed thereon by the Committee and its Subcommittees as they were constituted over the fifteen years of their existence; but in the margin are contained certain of the comments thereon by the Supreme Court.[4]

[4] "It would be difficult to imagine a less explicit authorizing resolution." 354 U. S. 178, at 202.

Against the background of its views so voiced, the Court considered, in terms presently relevant, the relationship of congressional investigating committees and the witnesses who appear before them. The opinion in *Watkins* clearly describes five criteria by which the pertinence of a question can be made clear to a witness (354 U. S. 178,

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"• • • An excessively broad charter, like that of the House Un-American Activities Committee, places the courts in an untenable position if they are to strike a balance between the public need for a particular interrogation and the right of citizens to carry on their affairs free from unnecessary governmental interference. It is impossible in such a situation to ascertain whether any legislative purpose justified the disclosures sought and, if so, the importance of that information to the Congress in furtherance of its legislative function. The reason no court can make this critical judgment is that the House of Representatives itself has never made it. Only the legislative assembly initiating an investigation can assay the relative necessity of specific disclosures." *Id.* at 205-206.

But the Court added:

"• • • Applied to persons prosecuted under §192 [2 U. S. C.], this raises a special problem in that the statute defines the crime as refusal to answer 'any question pertinent to the question under inquiry.' Part of the standard of criminality, therefore, is the pertinency of the questions propounded to the witness." *Id.* at 208. "• • • It is obvious that a person compelled to make this choice is entitled to have knowledge of the subject to which the interrogation is deemed pertinent. That knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense. The 'vice of vagueness' must be avoided here as in all other crimes. *There are several sources that can outline the 'question under inquiry' in such a way that the rules against vagueness are satisfied. The authorizing resolution, the remarks of the chairman or members of the committee, or even the nature of the proceedings themselves, might sometimes make the topic clear.* This case demonstrates, however, that *these sources* often leave the matter in grave doubt." *Id.* at 208-209. (Emphasis added.)

This indicates to us that it is possible for the Committee itself or the nature of the proceedings themselves "to make the topic clear," i.e., so to outline the question under inquiry as to satisfy the rules against vagueness. The Court found that Watkins had no such guide.

209, 211, 212, 213, 214): (1) the authorizing resolution, (2) opening remarks of the chairman, members, or counsel of the Committee, (3) the nature of the proceedings, (4) the questions themselves, and (5) the chairman's response to an objection on pertinency.

There are several reasons which we believe militate against the conclusion urged by appellant in this case that the resolution itself was struck down and that, consequently, the prosecution based on failure to answer questions propounded by the Subcommittee was fatally defective.

In the first place, we believe that if the Court had intended to strike down the resolution, it would have said so in so many words. It would not have left so vital an issue to inference or interpretation. The far-reaching result of such a holding would be that the Committee, established by action of the entire House of Representatives, would be rendered helpless and would not even be able to summon a witness, much less have him testify. Nothing less would be an immediate consequence. Certainly nowhere in the *Watkins* opinion does the Court use language essential to effectuate the result contended for by appellant and, on remand, there is no such direction to us to strike down the resolution or to hold invalid the indictment brought for failure to answer questions pertinent to the subject under inquiry. In the absence of a clear expression from the Court we do not take this position.

In the second place, had the Supreme Court struck down the resolution creating the Committee the matter would have been ended, without the further, extended discussion found in *Watkins*. We cannot assume the rest of the opinion to be, nor do we read it as, mere dictum. On the contrary, it is clear the Court was familiar with

the present case as it is specifically referred to in note 34 of the opinion in *Watkins*. The Court certainly knew, therefore, that Barenblatt's conviction grew out of testimony taken under the same resolution. Moreover, it is reasonable to assume that, had the resolution under which both Watkins and Barenblatt were questioned been stricken in its entirety, this case would have been *reversed* on authority of *Watkins* rather than *remanded* for consideration "in light of" that opinion. We read *Watkins* as demonstrating the necessity of more than ordinary caution in upholding First Amendment rights of individuals who are summoned before committees or subcommittees which operate under resolutions infected with the vagueness criticized in *Watkins*.

We do believe that the Supreme Court was of the opinion that the vagueness of the resolution made it necessary, and only fair, that the witness be apprised of the particular matter under inquiry by the Committee or Subcommittee holding the hearings, and, on objection, of the pertinency of the questions involved in the inquiry.

Thirdly, the Supreme Court cited in *Watkins* a number of cases, both in that Court and in Courts of Appeals, bearing on convictions sustained under the same resolution.[5] There is no suggestion that those decisions were repudiated or that their reasoning was erroneous. One finds no intimation that the cases should have been decided by the simple process of voiding the resolution establishing the Committee. We are of clear opinion that

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[5] See, among others, *Quinn* v. *United States*, 349 U. S. 155 (1955); *United States* v. *Bryan*, 339 U. S. 323 (1950); *Barsky* v. *United States*, 83 U. S. App. D. C. 127, 167 F. 2d 241, *cert. denied*, 334 U. S. 843 (1948), *rehearing denied*, 339 U. S. 899 (1950); *United States* v. *Josephson*, 165 F. 2d 82 (2d Cir. 1947), *cert. denied*, 333 U. S. 838, *rehearing denied*, 333 U. S. 858, *motion for leave to file second petition for rehearing denied*, 335 U. S. 899 (1948).

Watkins did not void H. Res. 282, 75th Cong., 3d Sess., or H. Res. 5, 79th Cong., 1st Sess.[6]

Apart from our present review in light of *Watkins*, we have reconsidered the case also in light of *Sweezy v. New Hampshire*, 354 U. S. 234 (1957). Appellant argues that there the Court emphasizes by analogy the fallibility of the resolution creating the Committee. Sweezy refused to answer questions in the course of an investigation by the State Attorney General acting under a resolution of the State Legislature relating to subversive activities. The Supreme Court there held that the investigation had deprived Sweezy of due process of law under the Fourteenth Amendment, and concluded that the record did not sustain the power of the State of New Hampshire to compel the disclosures that the witness refused to make. At the outset of the hearing, Sweezy had raised the question of pertinency as well as the question of violation of First Amendment rights. The Court further pointed out that there was no assurance that the legislature wanted answers to certain questions asked by the Attorney General, to whom the legislature had delegated the duty of making the investigation.

We think that *Sweezy* does not compel us to hold, under the circumstances of the instant case, that any of the appellant's constitutional rights were violated.

In the *Watkins* case, having held that the resolution was not sufficiently specific, standing alone, to advise the witness of the question under inquiry, or at least having expressed doubt, the Supreme Court considered whether the statement of the chairman of the Subcommittee was sufficient to apprise Watkins of the matter under inquiry and whether, when Watkins objected to the questions on

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[6] *Watkins*, notes 35, 36.

the ground of pertinency, the chairman's response was adequate to convey sufficient information on this point. The Court observed that that statement was nothing more than a paraphrase of the resolution itself and gave Watkins insufficient information concerning the subject under inquiry. The investigation there was in connection with communist infiltration in labor and the Court found that a majority of the witnesses were not connected with labor at all, and that seven of the thirty persons whose names were propounded to Watkins had no such connections. The Court wrote that the "inference becomes strong that the subject before the Subcommittee was not defined in terms of communism in labor," and concluded that the question under inquiry was not adequately revealed to Watkins when he had to decide, at his peril, whether or not to answer. The Court declared that "fundamental fairness demands that no witness be compelled to make such a determination with so little guidance."

The Watkins situation is a far cry from that of Barenblatt. The record here discloses that at the opening of the hearings before the Subcommittee on February 25, 1953, the chairman made a statement of the purpose of the inquiry, the concluding part of which reads as follows:

> "*[T]he objective of this investigation is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.*"[7] (Emphasis added.)

Comparison of this statement with the initial statement of the chairman discussed in the *Watkins* case, found by

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[7] The entire statement is quoted as an appendix to the opinion of this court dated January 3, 1957.

the Court to be insufficient, suggests a like infirmity. So regarded, we put aside the chairman's statement as a factor even though the fact that Barenblatt had prepared his statement as to his objections to the jurisdiction of the Committee (*infra*, pp. 10, *et seq.*) indicates that he quite well knew the nature of the hearing.

We examine the record then from other approaches. It appears that Barenblatt was summoned to appear before the Subcommittee at 10:30 A. M. on June 28, 1954, and that the session was called to order at 10:37 A. M. It may be presumed that Barenblatt was then present since there is no suggestion that he failed to obey the subpoena. At no time during the present hearing, or in the District Court, was it claimed that Barenblatt was not present when committee counsel, that day, made his statement as to the purpose of the hearing. As a matter of fact, it is not denied even at this time that Barenblatt was then present. In addition also is the fact that Barenblatt testified that he had heard the testimony of Crowley, the first witness called.

Included in the statement of committee counsel at the June 28, 1954, hearing was the following:

> "The field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York."[8]

The question under inquiry was clearly indicated to the witnesses that day. From what we have said, as well as from what follows in his own testimony, it may fairly be inferred that Barenblatt was present and received the same information.

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[8] 240 F. 2d at 881, note 8.

The next standard discussed by the Supreme Court is the nature of the proceedings. Barenblatt testified the same day as did Crowley, who identified him (Barenblatt) as a member of the Haldane Club of the Communist Party at the University of Michigan. Some of the other witnesses who testified were members of the Communist Party and others, including Barenblatt, were charged with being members of the Communist Party while at the University of Michigan several years before the hearings. All questions related to communist activity at the university, and it is clear that Barenblatt had knowledge that this was the subject matter being inquired into. We are of opinion that the nature of the proceedings, which Barenblatt personally observed, clearly indicated to him the question under inquiry.

The next standard discussed by the Supreme Court was the nature of the questions as put.[9] Here, Barenblatt was asked specifically about his membership in the Haldane Club of the Communist Party while he attended the University of Michigan and was a student of the University of Michigan Council of Arts, Sciences, and Professions. These questions, and the balance of the questions forming the basis of the indictment, viewed in the light of what the committee counsel had said and Crowley's preceding testimony, all in Barenblatt's presence, made indubitably clear to Barenblatt the nature of the subject under inquiry to which the questions were directed.

The record of the hearing, at which Barenblatt appeared and during which the questions in controversy were asked, is devoid of any objection interposed on the ground of

[9] The Supreme Court in *Watkins* said (p. 213): "The most serious doubts as to the Subcommittee's 'question under inquiry,' however, stem from the precise questions that petitioner has been charged with refusing to answer. Under the terms of the statute, after all, it is these which must be proved pertinent."

pertinency. Indeed, every indication is that he came prepared to refuse to answer any questions of moment—pertinent or not. He appeared before the Subcommittee accompanied by counsel and armed with an eleven-page prepared, written statement entitled "Objections to Jurisdiction of the Committee on Un-American Activities and to Questions Propounded by It," objecting "not only to the jurisdiction of the committee, but also to the questions propounded by it. This objection [the statement continues] is made upon advice of counsel as to my rights as provided for in rule VII of the rules of procedure of this committee. Counsel who appear for me are Philip Wittenberg and Irving Like of 70 West 40th Street, Borough of Manhattan, New York City."

The statement can best be described as a lengthy legal brief attacking the jurisdiction of the committee to ask appellant any questions or to conduct any inquiry at all, based on the First, Ninth and Tenth Amendments, the prohibition against bills of attainder, and the doctrine of separation of powers. This brief cited more than twenty Supreme Court decisions, some of which do not concern the congressional power of investigation; and, in several instances, dissenting opinions were cited. Included in this statement are the following:

> "1. I, Lloyd Barenblatt, having been subpenaed before the Committee on Un-American Activities, by subpena dated the 28th day of May 1954, returnable on the 28th day of June 1954, hereby respectfully object to the power and jurisdiction of this committee to inquire into—
>
> (a) My political beliefs;
>
> (b) My religious beliefs;
>
> (c) Any other personal and private affairs;

(d) My associational activities.

"2. I am a private citizen engaged in work in the fields of education and research, and in writing and speaking in connection therewith. I hold no office of public honor or trust. I am not employed by any governmental department. I am not under salary or grant from any governmental department.

"3. The grounds of my objection are as follows:

"A. Any investigation into my political beliefs, my religious beliefs, any other personal and private affairs, and my associated activities, is an inquiry into personal and private affairs which is beyond the powers of this committee.

* * * * *

"D. Under our Constitution our Government is a government of limited powers, tripartite in form, consisting of the legislative, the judicial, and the executive. This separation is fundamental to the preservation of the rights of the people in order that no one department may, through its power, rise to become a despotic arbiter. This committee, through this investigation into my political, associational, religious, and private affairs trespassed upon the judicial department and has caused a lack of balance of power which constitutes a threat to my liberty as an American citizen and is an unconstitutional usurpation.

* * * * *

"This committee, by compelling me to leave my ordinary pursuits and to attend before it for the purpose of testifying with regard to my political beliefs, my religious beliefs, other personal and private affairs, and my associational activities, is acting

as a judicial indicting and accusatory power. It is intruding into the judicial sphere and is following a practice which closely parallels the practices which resulted in bills of attainder being prohibited by our Constitution (art. I, sec. 10).

* * * * *

"Upon all the grounds aforesaid I object not only to the jurisdiction of this committee, but also to the questions propounded by it. This objection is made upon the advice of counsel as to my rights as provided for in rule VII of the rules of procedure of this committee."

To indicate the length to which the Subcommittee went to indicate to Barenblatt the pertinency of the questions, even though the question of pertinency was not raised by him, we quote from the record of Hearings before the Committee on Un-American Activities, House of Representatives, 83rd Congress, 2d Session, Communist Methods of Infiltration (Education—Part 9, pp. 5813-14):

"Mr. Doyle [Representative Doyle]. Mr. Chairman, I think the record should show that at this time there are pending before the United States Congress several active bills dealing with the question of subversive activities, dealing with the question of the Communist Party, dealing with the question of the responsibility that we have as a congressional committee under Public Law 601.

"I am sure that is the record, and I would like the record of this hearing of this committee to especially show it—

"Mr. Velde [Representative Velde]. Yes, I think—

"Mr. Doyle (continuing). And that this witness and these other witnesses could help us in line with

our Public Law 601 responsibility to have hearings with reference to recommendations for legislation in this area under Public Law 601 in accordance therewith.

"Mr. Velde. I concur with you, Mr. Doyle, and I wish to further state that the record should show that the evidence or information contained in the files of this committee, some of them in the nature of evidence, shows clearly that the witness has information about Communist activities in the United States of America, particularly while he attended the University of Michigan.

"That information which the witness has would be very valuable to this committee and its work.

"It is the opinion of the committee, at least the Chair, that the committee has a constitutional legal right in all ways and forms and means to get the information which has been requested from the witness."

Whenever appellant was asked a question which he refused to answer, he asked permission, or attempted without permission, to read the prepared statement. That statement, which was inserted in the record of the hearing at which Barenblatt testified, in no way indicates that he had any doubt as to the subject under inquiry or as to the pertinency of the questions asked. On the contrary, everything points to Barenblatt's knowledge of the subject and his knowledge of the pertinency of the questions asked. Refusal to answer was based on the broad grounds above set forth. He specifically disclaimed invoking the Fifth Amendment.

Applying the *Watkins* ruling to this case, it will be seen that there is decisive distinction between the two. In the present case the subject of the investigation was stated

to be Communist Party activities within the field of education. There was no attempt made to proceed with the hearing under a mere re-hash of the resolution creating the Committee. Here was far more than "a very general sketch of the past efforts of the Committee," as the Supreme Court said in *Watkins*.

While Watkins testified freely as to his own activities, he simply declined to identify members who he believed had perhaps innocently become members of or were closely connected with the Communist Party and who had subsequently withdrawn therefrom. Barenblatt, however, declined to answer either as to his own activities or the activities in general of the Haldane Club. He was represented by counsel, and presented written objections based generally on the jurisdiction of the Committee. His objections went to questions about his own activities and acts and were on specific grounds. Those objections are sufficiently described in our previous opinion.

We have considered the other questions raised by appellant on remand and which he says are material here in the light of *Watkins*. We think such other matters are sufficiently answered by the original opinion of this court, which by reference, for present purposes, is incorporated herein.

We are of opinion that, under the standards laid down for us by the Supreme Court, Barenblatt was made fully aware of the subject under inquiry and was in a position to judge the pertinency of the questions relating to that subject. We are further of the opinion that the questions were in fact relevant and pertinent to that subject.

In accordance with the direction of the Supreme Court, we have carefully considered *Watkins* and its impact on *Barenblatt*. Taking account of all circumstances as noted,

and believing the cases are distinguishable as indicated, we affirm the judgment of conviction.

Affirmed.

EDGERTON, *Chief Judge*, whom BAZELON, *Circuit Judge*, joins, *dissenting*: A unanimous panel of this court decided that "the opinion of the Supreme Court in Watkins v. United States * * * requires reversal" of the conviction of Singer.[1] Barenblatt, like Singer, was convicted of refusing to answer questions of a subcommittee of the Un-American Activities Committee investigating Communists in the field of education. There is no difference pertinent to *Watkins* between Singer's case and Barenblatt's. I think this court errs in overruling our *Singer* decision.

I understand *Watkins* to hold that the Committee on Un-American Activities had no authority to compel testimony because it had no definite assignment from Congress. The Supreme Court said: "[W]hen First Amendment rights are threatened, the delegation of power to the Committee must be clearly revealed in its charter. [354 U. S. at p. 198] * * * An essential premise in this situation is that the House or Senate shall have instructed the Committee members on what they are to do with the power delegated to them. * * * [T]he responsibility of the Congress * * * to insure that compulsory process is used only in furtherance of a legislative purpose * * * requires that the instructions to an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity. [p. 201] * * * It would be difficult to imagine a less explicit authorizing resolution. [p. 202] * * * Combining the language of the resolution with the construction

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[1] *Singer* v. *United States*, — U. S. App. D. C. —, 247 F. 2d 535; reversing *Singer* v. *United States*, 100 U. S. App. D. C. 260, 244 F. 2d 349, which had affirmed *Singer* v. *United States*, 139 F. Supp. 847 (D. C. D. C.).

it has been given, it is evident that the preliminary control of the Committee exercised by the House of Representatives is slight or non-existent. No one could reasonably deduce from the charter the kind of investigation that the Committee was directed to make. [pp. 203-4] * * * The Committee is allowed, in essence, to define its own authority * * * [This] can lead to ruthless exposure of private lives in order to gather data that is neither desired by the Congress nor useful to it. * * * Protected freedoms should not be placed in danger in the absence of a clear determination by the House or the Senate that a particular inquiry is justified by a specific legislative need. * * * An excessively broad charter, like that of the House Un-American Activities Committee, places the courts in an untenable position * * * [p. 205] It is impossible in such a situation to ascertain whether any legislative purpose justifies the disclosures sought * * * The reason no court can make this critical judgment is that the House of Representatives itself has never made it. * * * Plainly these committees are restricted to the missions delegated to them, *i.e.*, to acquire certain data to be used by the House or the Senate in coping with a problem that falls within its legislative sphere. No witness can be compelled to make disclosures on matters outside that area" [p. 206].

In summary: (1) The "instructions to an investigating committee [must] spell out that group's jurisdiction and purpose with sufficient particularity." (2) "It would be difficult to imagine a less explicit authorizing resolution * * * No one could reasonably deduce from the charter the kind of investigation that the Committee was directed to make." (3) "No witness can be compelled to make disclosures on matters outside that area." Since Congress did not define that area, there can be no proof that the

Committee's questions were within it. It follows that the defendant must be acquitted.

Even if, contrary to my clear understanding of *Watkins*, Congress did "with sufficient particularity" authorize the Committee to investigate something, it by no means follows that Congress authorized the Committee to investigate Communists in the field of education. Four Justices of the Supreme Court recently said: "It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas, particularly in the academic community. • • • [T]he areas of academic freedom and political expression" are "areas in which government should be extremely reticent to tread." Two other Justices said in the same case: "These pages need not be burdened with proof, based on the testimony of a cloud of impressive witnesses, of the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university." *Sweezy* v. *New Hampshire*, 354 U. S. 234, 245, 250, 262. The Court there held that Sweezy, a university teacher, could not constitutionally be required to answer certain questions about his political activities and connections. Barenblatt was a university teacher. He was convicted because he would not answer certain questions about his political activities and connections. Though the two cases are not identical and *Sweezy* does not prove that Barenblatt's conviction violates his constitutional rights, it does show that this conviction raises serious constitutional questions. Delegation of power to a congressional committee must be construed narrowly when a narrow construction avoids serious con-

stitutional questions. *United States* v. *Rumely*, 345 U. S. 41. The words of the Committee's charter, "investigations of . . . un-American propaganda activities," need not and therefore should not be interpreted to authorize the Committee to select for investigation political activities and connections of university teachers. We must suppose that if Congress had intended to authorize such an investigation it would have done so explicitly.

We need not consider whether the Committee's questions to Barenblatt were pertinent to an investigation of Communists in the field of education. The force of the Court's decision in *Watkins* that the Committee had no definite assignment, and therefore no authority to compel testimony, is not destroyed by the Court's decision that the questions Watkins refused to answer were not clearly pertinent to the investigation in which the Committee was then engaged. "[W]here there are two grounds, upon either of which an appellate court may rest its decision, and it adopts both, 'the ruling on neither is *obiter*, but each is the judgment of the court and of equal validity with the other.'" *United States* v. *Title Ins. & Tr. Co.*, 265 U. S. 472, 486. And even if the Supreme Court's demonstration that the Committee on Un-American Activities had no authority to compel testimony were *obiter*, this court should defer to it.

Although, on examination, the answer to a question is plain, higher courts commonly require lower courts to make the examination and decide the question in the first instance. The Supreme Court followed the usual practice in this case.

FAHY, *Circuit Judge*, with whom WASHINGTON, *Circuit Judge*, joins, *dissenting:* Reading *Sweezy* in the light of *Rumely* and *Watkins*, I think the Committee could not proceed to investigate the field of education—at least with the use of compulsory process, under the sanction of contempt—without a more specific authorization than it had been given, and that therefore the conviction must be reversed. It is unnecessary here to go into the question whether *Watkins* holds the Committee to be without authority to compel testimony on any subject of inquiry.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,327

LLOYD BARENBLATT,

Appellant,

—v.—

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the District of Columbia

Decided January 3, 1957

Mr. David Scribner, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom *Mr. David Rein* was on the brief, for appellant.

Mr. John D. Lane, Assistant United States Attorney, with whom *Messrs. Oliver Gasch*, United States Attorney, *Lewis Carroll* and *William Hitz*, Assistant United States Attorneys, were on the brief, for appellee.

Before WASHINGTON, BASTIAN and BURGER, Circuit Judges.

BASTIAN, *Circuit Judge*: Appellant was tried, convicted and sentenced under 2 U. S. C. §192 (1952)[1] (contempt of

[1] "*Refusal of witness to testify.* Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter

Congress). From this conviction the present appeal was taken.

The factual situation disclosed by the record is as follows: On June 28, 1954, one Francis X. T. Crowley testified before a subcommittee of the Committee on Un-American Activities of the House of Representatives concerning his past membership and activities in the Communist Party, and identified the appellant as a member of the Haldane Club of the Communist Party while appellant was a graduate student and instructor at the University of Michigan. On that same day, appellant appeared before the subcommittee in response to its subpoena, at which time, after certain preliminary inquiries, appellant was asked the questions which he refused to answer. These refusals are the basis for his indictment, which charges that appellant "unlawfully refused to answer" the following questions:

"Count One: Are you now a member of the Communist Party?

"Count Two: Have you ever been a member of the Communist Party?

"Count Three: Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?

"Count Four: Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?

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under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

"Count Five: Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions?"

The indictment charges that these questions "were pertinent to the question then under inquiry," and that the subcommittee was conducting hearings at the time pursuant to its enabling resolution.[2] This law establishes the Committee on Un-American Activities and vests in it, and its duly constituted subcommittees, the duty:

"* * * to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

At the time of appellant's appearance, the subcommittee was conducting an inquiry into communism in the field of education, and the record reflects that appellant had knowledge of this.

I.

The first ground urged for reversal is that the indictment is fatally defective in that it does not plead a deliberate and intentional or knowing refusal to answer. This specific question was ruled on by this court contrary to appellant's contention in *United States* v. *Deutch*, —— U. S. App. D. C. ——, 235 F. 2d 853 (1956).

[2] Public Law 601, Sec. 121, 79th Cong., 2d Sess. (60 Stat. 828), and H. R. Res. 5, 83d Cong., 1st Sess. (1953).

The argument is also advanced that the indictment is defective in that it does not describe the matter into which the subcommittee was inquiring at the time appellant appeared before it. The indictment alleges an unlawful refusal to answer "questions which were pertinent to the question then under inquiry," which inquiry was made pursuant to the subcommittee's enabling resolution. Thus, it appears that the indictment stated all the elements of the offense charged and served notice on appellant as to what conduct on his part constituted the alleged offense. This satisfies the requirements of Fed. R. Crim. P. 7(c). See *United States* v. *Josephson*, 165 F. 2d 82 (2d Cir. 1947), *cert. denied*, 333 U. S. 838 (1948).

It is also contended that the indictment is fatally defective in that it alleges a refusal to answer questions before a subcommittee of a committee, and that Congress did not intend to make it a crime to refuse to answer questions of a subcommittee. Appellant urges that Congress was fearful of having penal sanctions imposed upon those who refused to answer questions propounded by subcommittees, as Congress considered subcommittees more subject to partisanship and more likely to abuse their powers than full committees. We disagree. Nothing has been shown which reflects that Congress has indicated such belief. We can only construe the statute in the light of the obvious purpose for its enactment. That purpose was to discourage the impairment of the vital investigative function of Congress. *Fields* v. *United States*, 82 U. S. App. D. C. 354, 164 F. 2d 97, *cert. denied*, 332 U. S. 851 (1948). The function Congress sought to protect is as often committed to subcommittees as it is to full committees of Congress, as indeed it must be.

Construing the statute in a manner consistent with its obvious purpose [*Vermilya-Brown Co.* v. *Connell*, 335 U. S.

377 (1948), *United States* v. *Brown*, 333 U. S. 18 (1948), *The Emily and The Caroline*, 22 U. S. (9 Wheat.) 381 (1824)] we hold that Congress intended the word "committee" in its generic sense, which would include subcommittees.

II

Next, appellant contends that the subcommittee failed to consider and overrule his objections to the questions asked him, and that, therefore, there could be no proof beyond a reasonable doubt of a criminal intent to refuse to answer. He insists that to meet this burden the subcommittee must be shown to have considered his objections, to have overruled them, and then to have directed him to answer. In support, appellant cites *Quinn* v. *United States*, 349 U. S. 155 (1950), *Emspak* v. *United States*, 349 U. S. 190 (1950), and *Bart* v. *United States*, 349 U. S. 219 (1950).

The record of the subcommittee hearing for the day appellant appeared was admitted in evidence at the trial.[3] From that record, we are convinced that appellant did communicate his objections to the subcommittee and that he was clearly directed to answer each of the questions. Furthermore, it is entirely clear that appellant had ample opportunity to state any additional objections he may have had.

Appellant came before the subcommittee with an eleven-page written statement, which he characterized as his objections to the questions asked of him. Whenever he was asked a question which he refused to answer, appellant asked permission, or attempted without permission, to read the prepared statement. The Chairman ruled that

[3] Hearings Before the House Committee on Un-American Activities on Communist Methods of Infiltration (Education—Part 9), 83d Cong., 2d Sess. (1954), Gov. Exhibit No. 8.

it was a preliminary statement, which, under the rules of the subcommittee (with which appellant admitted familiarity) had to be filed a reasonable time in advance of appearance before the subcommittee.[4] At one point appellant asserted:

> "I am objecting on these grounds, and I will not answer any questions about which the list of objections is read: my political beliefs; my religious beliefs; any other personal and private affairs; my associational activities.
>
> "I will not answer any of those questions on the grounds of my objections in this statement which I again respectfully request that I be able to read at this point to get into the record the objections so that we can proceed from that point."

This assertion by appellant was made before he was directed to answer the question set forth in the first count of the indictment.

Prior to making the objection referred to above, appellant had stated, in response to a question:

> "Sir, I would like here to state my objections to the power and jurisdiction of this committee to inquire into my political beliefs, my religious beliefs, and any other personal and private affairs * * *"

The Chairman, as stated, had regarded the written statement as a preliminary one and had ruled that it would

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[4] The statement can best be described as a lengthy legal brief attacking the jurisdiction of the committee to ask appellant any questions or to conduct any inquiry at all, based on the First, Ninth and Tenth Amendments, the prohibition against bills of attainder, and the doctrine of separation of powers. This brief cited more than twenty Supreme Court decisions, some of which do not concern the congressional power of investigation; and, in several instances, dissenting opinions were cited.

be taken under advisement as to whether or not it might be inserted into the record. Faced with continued refusal to answer the questions and appellant's repeated attempts to read the lengthy statement, the Chairman waived compliance with the rules of the subcommittee and accepted the statement into the record. Thereafter, when appellant refused to answer a question, he referred to the statement, as the subcommittee suggested that he do, as the basis of his refusal. The record reflects that one member of the subcommittee had read the statement but it does not show that the other members had done so. It is this upon which appellant relies when he argues that the subcommittee failed to consider his objections. With that position we cannot agree.

First, appellant did communicate to the subcommittee the general basis of the objections contained in his written statement. Secondly, one member of the subcommittee, shown by the record to have read the statement, indicated his belief that the statement contained no valid grounds for refusal to answer; and, in admitting the statement into the record, the Chairman indicated that he was relying on that member.

We cannot, within the limited power of a court to review the procedures of a congressional committee, insist that such a committee interrupt its proceedings for detailed examination of a lengthy attack on its power to ask a question or to make any inquiry at all.[5] Certainly the subcommittee had the right to insist that objections be cast in a reasonable form.

Thirdly, to the extent that appellant had an objection which was not actually communicated to the subcommittee,

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[5] Cf. *Eisler* v. *United States*, 83 U. S. App. D. C. 315, 170 F. 2d 273 (1948), *cert. dismissed*, 338 U. S. 883 (1949); *Barsky* v. *United States*, 83 U. S. App. D. C. 127, 167 F. 2d 241 (1948), *cert. denied*, 334 U. S. 843.

he has no one to blame but himself. The record does not disclose that the subcommittee denied appellant a right to object to questions or that it was in any way abusive in its treatment of him. On the contrary, the subcommittee demonstrated not only considerable patience but active interest in determining what appellant's objections were. This was true even to the extent that appellant was asked several times if the grounds for his objections encompassed the Fifth Amendment privilege against self-incrimination, which he stated they did not.

Briefly stated, our conclusions are: that appellant actually apprised the subcommitte of his objections; that the subcommittee found them unacceptable and directed appellant to answer; that the courts cannot require a committee to make a detailed study of what may be fairly described as a lengthy legal brief before it directs a witness to answer; that appellant had numerous opportunities to make known any additional objections he may have had but that he instead insisted upon reading his eleven-page statement; that that statement was read by one member of the subcommittee and found unpersuasive; and that the Chairman, relying on this member's knowledge of the statement, and its purport as communicated by the witness, directed an answer to each question. Therefore, we must hold that appellant's refusals to answer were at his own risk.

Quinn v. *United States, supra,* is not inconsistent with our view; we read that case as buttressing our conclusions. It concerned a witness who, instead of stating the grounds of his objections to questions of a congressional committee, represented his objections as being the same as those interposed by a previous witness, which objections had been vague and ambiguous. The Supreme Court held that, though Quinn had only vaguely asserted an objection based

on the Fifth Amendment, the committee should have overruled his objection and specifically directed him to answer before he could be convicted for contempt of Congress. It is noteworthy that the Supreme Court stated:

> "But the fact that a witness expresses his intention [to object on grounds of the Fifth Amendment] in vague terms is immaterial so long as the claim is sufficiently definite to apprise the committee of his intention. As every one agrees, no ritualistic formula is necessary in order to invoke the privilege." 349 U. S. at 164.

Consistent with *Quinn*, we conclude that appellant did apprise the subcommittee of his objections based on the First Amendment. Certainly there is no doubt here that the subcommittee, when it directed appellant to answer each question, knew that appellant objected. It knew the general bases of the objections and rejected them. It gave him an opportunity to make any objections not communicated. It then directed him to answer each question set forth in the indictment.

III

Appellant next contends that the primary purpose of the subcommittee's inquiry was to "expose" his beliefs and associations and that, therefore, the subcommittee exceeded the bounds of its investigative power. There can be no doubt that Congress has the power of inquiry and investigation when the inquiry or investigation is upon a subject concerning which Congress may legislate. The very resolution establishing the committee indicates that the subject under inquiry was one concerning which Congress could legislate. The fact that such an inquiry or investigation may reveal or "expose" some facts em-

barrassing to some one is incidental and without effect upon the validity of the inquiry.

Evidence was presented at the trial to show that the House Committee on Un-American Activities had been engaged in a continuing investigation into communist methods of infiltration and that one aspect of this investigation dealt with the field of education.[6] The trial court found that it was as a part of this larger and continuing study that appellant was called to testify.

The committee Chairman opened the first hearing on the subject of communist infiltration into the field of education on February 25, 1953, by stating the nature and purpose of the inquiry.[7]

Appellate urges that a statement in the Annual Report of the Committee to the effect that hearings were set up to demonstrate to the people of Michigan the infiltration into the field of education in Michigan "and the identity of those individuals responsible for its success * * *" shows that "exposure," not legislation, was the point and purpose of the hearings. This statement, in context, is part of an extended discussion of the whole activity of this committee and cannot be regarded as a statement of the sole or primary objective and, however, it may conflict with the broader objectives, does not justify reversal of appellant's conviction. Courts must presume congressional investigations to have valid legislative purposes. *Townsend* v. *United States*, 95 F. 2d 352, *cert. denied*, 303 U. S. 664 (1938). Since the statement relied on does not negate the presence of other, and we think legitimate,

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[6] Annual Report of the Committee on Un-American Activities for the Year 1953, H. R. Rep. No. 1192, 83d Cong., 2d Sess. (1954).

[7] For the statement of the Chairman see the appendix hereto.

purposes of the inquiry, the presumption of valid purposes is still operative and unrebutted. A reading of the full report indicates that the primary purposes of the inquiry were in aid of legislative processes.

Examination of the report shows that legislative recommendations were made by the committee " * * * based upon investigations and hearings, in the year, 1954." It is unnecessary for present purposes to comment on those recommendations except to say that they called for significant legislation, and illustrate that the committee did in fact recommend legislation based upon investigations and hearings in 1954, perhaps including the very hearing at which appellant testified. Apparently "exposure," if a purpose of the hearing in question, was not the primary purpose.

The subcommittee was investigating communist infiltration in the field of education, and did so pursuant to its duty to investigate the extent, character, and objects of un-American propaganda activities in the United States, and all other questions related thereto that would aid Congress in its legislative function. Taking this into consideration, together with the statement of the Chairman at the time the inquiry was inaugurated in February 1953, as well as the statement of the committee counsel on the morning appellant appeared to testify,[8] we conclude that the subcommittee's dominant purpose in examining appellant was to acquire information which it regarded as useful in formulating legislative recommendations. This is a more valid appraisal than would result from concen-

[8] Communist Methods of Infiltration (Education—Part 9), note 3 *supra*, at 5754: "The field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York. Without further ado, Mr. Chairman, if I have your permission I will call the witness."

trating on one isolated statement in the Annual Report. So long as competent evidence establishes a substantial legislative purpose in calling a witness before a congressional committee, and in its examination of him, we will not balance this purpose against other motivations. Once it is proven that the committee felt induced to call a witness in order to acquire information in aid of legislative processes, we think our limited function is exhausted.

We are next asked to decide whether Congress possesses the power to investigate citizens who are engaged in the education systems of the country. Appellant maintains that Congress cannot do this because the field of education has been reserved to the states, and that, under the Tenth Amendment, Congress has no authority to legislate in that sphere.

We must ascertain specifically the subject under inquiry at the time appellant appeared as a witness before the subcommittee. The official report of the Committee on Un-American Activities, which contains the testimony of appellant before the subcommittee, is entitled "Communist Methods of Infiltration (Education—Part 9)." This report indicates that, on the day appellant was heard by the subcommittee, the Chairman asked the committee counsel to state the purposes and reasons for the hearing. Counsel stated, among other things, that Crowley, a formerly recalcitrant witness, had volunteered to come before the subcommittee and that "[t]he field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley." The same day that the subcommittee heard Crowley, it examined appellant. Thus, we see that the title given the inquiry, "Communist Methods of Infiltration (Education—Part 9," was consistent with the announced subject of the inquiry at the time appellant appeared. Looking fur-

ther, the nature, purpose, and hope of the committee, when it began this general, continuing inquiry in February 1953, can be determined by examining Government Exhibit No. 7.[9] We take these statements of the Chairman as conclusive of the purpose of the inquiry pursuant to which appellant was called as a witness.

The inevitable result is that the purpose and nature of the inquiry was to determine communist methods of infiltration in the field of education. There is no indication of a congressional desire or attempt to examine curricula, content of text books, administration of schools, or criteria for employing and discharging teachers. Indeed, the committee's official report on this investigation negatives any such interpretation of the intent of Congress. There is nothing to suggest that education, as such, was any more involved here than were labor unions and the motion picture industry in earlier inquiries by this same congressional committee. Convictions of witnesses called pursuant to both of these latter investigations have been affirmed in the courts.[10]

While it is true, as appellant points out, that Congress has broader powers to enact legislation in the field of labor than it does in the field of education, it is not true that persons who incidentally happen to be teachers have greater immunity from inquiry into their activities than do labor leaders and screen writers, when those activities relate to matters which are a legitimate concern of the Congress. By virtue of their great profession, teachers owe a higher duty, morally at least, to their country and its citizenry; but their status as teachers does not confer

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[9] See appendix.

[10] See, *e.g.*, *Flaxer* v. *United States*, 235 F. 2d 821 (D. C. Cir. 1956); *Lawson* v. *United States*, 85 U. S. App. D. C. 167, 176 F. 2d 49 (D. C. Cir. 1949), *cert. denied*, 339 U. S. 972 (1950).

upon them a right not to have their separate or collateral activities inquired into when the same activities by others may be.

Shortly before appellant appeared before the subcommittee, its parent body had recommended to the Congress, and Congress had enacted, the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 667,[11] which provides that educational stipends shall not be paid to veterans in attendance at educational institutions listed by the Attorney General as totalitarian, fascist, communist or subversive. This is significant in that it demonstrates a valid legislative interest in the incidence of communist infiltration into educational institutions and the number, location and identity of communists in the schools, in order that Congress might be informed of a deed to extend or repeal the Act.

American colleges and universities are holders of contracts with the Government to conduct a variety of research projects of far-reaching consequence to the national security. They are frequently petitioners for and recipients of substantial grants not directly related to national security but involving expenditures of tax revenues. Thus, there are various other valid reasons for a congressional committee to launch an investigation of the type being conducted when appellant appeared as a witness. Congress has the recognized authority to conduct inquiries to determine if projects crucial to national defense, and paid for from public funds, are being carried forward with dispatch and in a manner consonant with safeguarding those projects from those whom Congress might regard as subversive or potential enemies. Therefore, it is important for Congress to know the methods, nature and extent of communist infiltration of colleges and

[11] 38 U. S. C. §933

universities which are or might become engaged in secret defense projects.

IV

Appellant's final contention is that the resolution establishing the Committee on Un-American Activities and conferring on it jurisdiction to make investigations is, on its face, contrary to the First and Fifth Amendments to the Constitution of the United States. This very contention has been urged upon this and other courts and has been consistently rejected.[12]

It is urged that a committee of Congress has no constitutional authority to require an answer of a witness as to his political beliefs and associations. In *Quinn* v. *United States*, 349 U. S. at 160-161, the Supreme Court said:

> "There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate. Without the power to investigate—including of course the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.
>
> "But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot

[12] *Marshall* v. *United States*, 85 U. S. App. D. C. 184, 176 F. 2d 473 (D. C. Cir. 1949), *cert. denied*, 339 U. S. 933 (1950); *Dennis* v. *United States*, 84 U. S. App. D. C. 31, 171 F. 2d 986 (D. C. Cir. 1949), *aff'd*, 339 U. S. 162 (1950); *United States* v. *Josephson*, 165 F. 2d 82 (2d Cir. 1947), *cert. denied*, 333 U. S. 838 (1948)); and cases cited notes 5 and 10 *supra*.

be used to inquire into private affairs *unrelated to a valid legislative purpose.* * * *" [Italics supplied.]

From this, it appears that if there is a valid legislative purpose, then, as was held in *Barsky*,[13] Congress can inquire into "private affairs" and, of course, political views and associations. If Congress can legislate against a threat of communism which is reasonably apprehended, it can, consistently with the meaning of the Constitution and the language in the *Quinn* case quoted above, inquire of a witness whether or not he is a communist, subject to the constitutional limitations imposed by the privilege against self-incrimination.

We said in *Barsky*:

"* * * We think that inquiry into threats to the existing form of government by extra-constitutional processes of change is a power of Congress under its prime obligation to protect, for the people that machinery of which it is a part, and inquiry into the desirability vel non of other forms of government is a power of Congress under its mandate to initiate amendments if such become advisable.

"* * *

"If Congress has power to inquire into the subjects of Communism and the Communist Party, it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject. * * *" 167 F. 2d at 246.

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[13] *Barsky* v. *United States*, note 5 *supra*.

Appellant asks that we re-evaluate *Barsky* bearing in mind that the subcommittee record indicates that appellant's participation, if any, in communist groups was confined to the intellectual and idealogical realm and was not conspiratorial in nature. We reaffirm *Barsky*, and see nothing which places appellant beyond the ruling therein.

If the Haldane Club of the Communist Party, to which appellant allegedly belonged, was in fact principally a Marxist study group and, as believed by the subcommittee, an adjunct of the Communist Party, we cannot say that the identity of its members and the extent and nature of their participation were not matters of legitimate concern to the subcommittee under its enabling resolution. Whether the Communist Party embraces not only conspiratorial groups but intellectual discussion groups as well, the relationship between them, the group most prevalent, and the extent to which an individual might participate in the activities of each, whether such groups operate within or are connected with public educational institutions, place the questions asked appellant clearly within the pale of valid inquiry.

Though we, of course, agree that Congress does not have a general power to inquire into political beliefs and associations, it does have that power where the answer to the question posed can be and is regarded by Congress as having value in the exercise of legislative duty. Congress can legislate on the internal security dangers it has declared to have arisen from the activities of the Communist Party in this country. It can and it has.

Our view of the record convinces us that the indictment was in no respect defective; that appellant either communicated or could have communicated all his objections to questions asked him and that the committee indicated his objections were untenable; that, if the committee

was motivated in part by a purpose of exposure in calling appellant as a witness, it was also properly motivated by a desire for information which it reasonably believed would be helpful to it in the discharge of its duty to make legislative recommendations; and that the subject matter under investigation was not beyond the scope of permissible congressional inquiry under the committee's enabling resolution; which resolution is within its constitutional powers.

The conclusion dictated is that the judgment appealed from is correct and is therefore

affirmed.

APPENDIX

Hearings Before the House Committee on Un-American Activities, Communist Methods of Infiltration (Education), 83d Cong., 1st Sess. (1953), pp. 1-3.

Opening Statement of the Chairman, February 25, 1953

"Mr. Davis [the first witness called], it is our understanding that you are a member of the teaching profession. In opening this hearing, it is well to make clear to you and others just what the nature of this investigation is.

"From time to time, the committee has investigated Communists and Communist activities within the entertainment, newspaper, and labor fields, and also within the professions and the Government. In no instance has the work of the committee taken on the character of an investigation of entertainment organizations, newspapers, labor unions, the professions, or the Government, as such; and it is not now the purpose of this committee to investigate education or educational institutions, as such. The committee will follow its long-established policy of investigating Communists and Communist activities wherever it has substantial evidence of its existence.

"When investigating Communists and Communist activities within certain labor unions, the committee was met with the charge by alarmists and partisans within that field that the committee was a group of Fascists and the enemy of labor, and that the real purpose of the investigation was to destroy labor unions. Similar and equally unfounded charges have been made with regard to this hearing. In pursuing its work within the field of labor, the committee carefully refrained from taking any part in any internal disputes within labor or any disputes between employers and employees and confined its activities to the ascertainment and identification of leaders in the labor unions who were members of the Communist Party and were using their influence to promote the objectives of the Communist Party within the field of labor, and to the character, extent, and objects of their Communist Party activities. The work of the committee in this respect has met with such growing success that many labor unions are now actively engaged in eliminating from positions of influence union officials known to be members of the Communist Party and engaged in Communist activities.

"The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field.

"The committee is charged by the Congress with the responsibility of investigating the extent, character, and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"It has been fully established in testimony before congressional committees and before the courts of our land that the Communist Party of the United States is part of an international conspiracy which is being used as a tool or weapon by a foreign power to promote its own foreign policy and which has for its object the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence, if necessary. This organization cannot live except by the promulgation and diffusion of subversive and un-American propaganda and in the view of this committee every person who remains a member of it is contributing to the ultimate accomplishment of its objectives. Communism and Communist activities cannot be investigated in a vacuum. The investigation must, of necessity, relate to individuals and, therefore, this morning the committee is calling you as a person known by this committee to have been at one time a member of the Communist Party.

"The question is sometimes asked whether it is necessary to call as witnesses those who are no longer members of the Communist Party. It is quite obvious for a number of reasons that the answer should be 'Yes.' Such witnesses add immeasurably to the sum total of the knowledge of the character, extent, and objects of Communist activities. The testimony of former Communist Party members resulted virtually in immobilizing the Communist Party in Hollywood. These witnesses considered it their patriotic duty to answer under oath questions relating to their knowledge of Communist infiltration into the organizations of which they had been members, and to their knowledge of other Communist Party activities. Witnesses from the Screen Writers' Guild, the directors' guilds, labor unions, the legal profession, the medical profession, and other groups have made a great contribution to the defense

of their country by disclosing to this committee facts within their knowledge.

"Former Communist Party membership, in the view of the committee, should not be held against an individual whose testimony admitting former Communist Party membership has that character of truthworthiness which convinces one that he has completely and finally terminated his Communist Party membership and has been given in all good faith. It is of great aid in determining who remain in the Communist Party to ascertain who have left it.

"The committee was greatly concerned with the evidence developed in the Hollywood hearings with respect to the type of 'thought control' practiced by the Communist Party upon its members. Screen writers were told how and what they should write. The testimony of Budd Schulberg and Edward Dmytryk demonstrate the point as clearly as laboratory experiments would prove a chemical reaction. The same influence was found to exist in the field of art and music. An objective study of this testimony will lead to the inescapable conclusion that it is the Communist Party which is the enemy of academic freedom.

"The committee is equally concerned with the opportunities that the Communist Party has to wield its influence upon members of the teaching profession and students through Communists who are members of the teaching profession. Therefore, *the objective of this investigation is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.*" [Emphasis supplied.]

ORAL OPINION OF THE DISTRICT COURT

This defendant is on trial before the Court on a charge of contempt of Congress, in that he declined to answer certain questions as a witness before a subcommittee of the House Committee on Un-American Activities. The questions are as follows:

> "Are you now a member of the Communist Party?"
>
> "Did you know Francis Crowley as a member of the Communist Party?"
>
> "Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?"
>
> "Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions?"

The evidence shows that these questions were asked, that the defendant deliberately and intentionally refused to answer; that he was then directed to answer the questions by the chairman of the subcommittee, and that he persisted in his refusal.

Some of the questions of law here raised were also raised in the case of *United States* against *Harry Sacher*, which was tried a few days ago, and I refer to my remarks at the conclusion of that trial for the disposition of those questions. Two or three additional points are raised here that were not involved in the *Sacher* case. The first is the question of pertinency of the questions addressed to the witness.

The House Committee on Un-American Activities is authorized by Rule 17(b), either as a whole or by subcommittee, to make investigations of the extent, character, and objects of un-American propaganda activities in the United States; the diffusion within the United States of subver-

sive and un-American propaganda; and all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

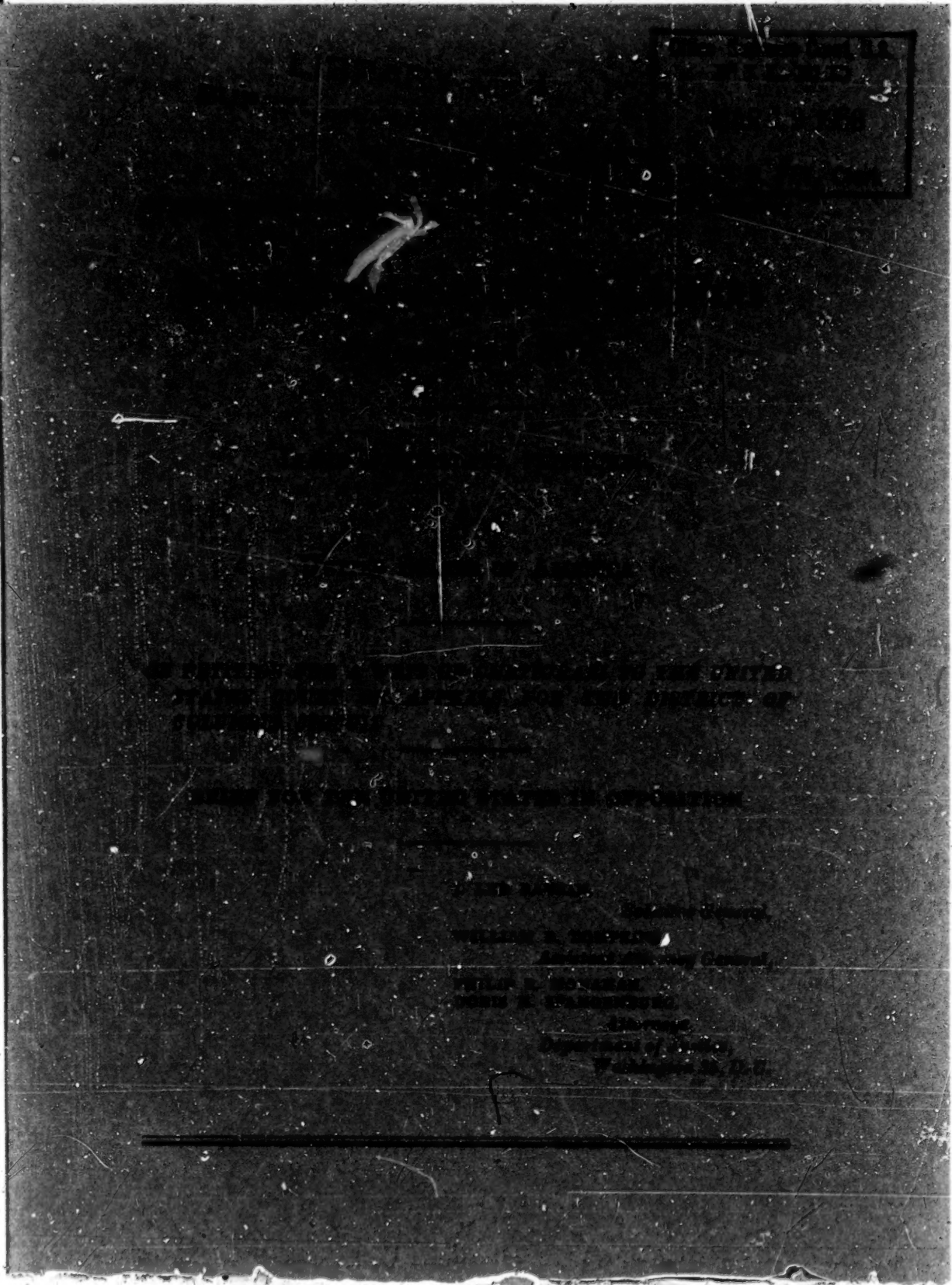
The authority of the House Committee on Un-American Activities to inquire of witnesses as to whether they were members of the Communist Party has been established and reiterated time and time again by the Court of Appeals and by the Supreme Court. *Lawson* versus *United States*, 179 Federal (2d) 49, and *Emspak* versus *United States*, 203 Federal (2d) 54, are some of the authorities so holding. The questions are therefore pertinent on their face. But even beyond that certain documents were introduced in behalf of the Government to show the specific basis for the particular inquiries of the defendant, namely, that the committee was investigating alleged infiltration of the Communist movement into educational institutions, and the witness was being interrogated concerning those matters; he being a member of the educational profession. The evidence further shows that the testimony elicited by the committee was actually being used by the committee in connection with legislative recommendations.

The next point that is raised is that the hearing, although it started as a hearing before the full committee, was transferred into a hearing before a subcommittee. There is no variance between the proof and the indictment, because the indictment alleges that the hearing was being conducted by a subcommittee. The rules expressly authorize the committee to act through a subcommittee, and in the absence of any rule as to how a subcommittee should be appointed, it would necessarily follow that the chairman of a committee would have the right to appoint subcommittees. Moreover, the Court is impressed by the opinion of Chief Justice Vinson in *United States* versus *Bryan*, 339 U. S. 323, to the effect that technical questions

and objections relating to the jurisdiction or composition of a committee or subcommittee must be raised at the hearing instead of later on in the trial, on a charge of contempt.

As the courts have held time and time again, while the contempt must be willful, it does not mean that there must be proof of bad faith or dishonest motives. Even if a witness acts in good faith, that is not a defense and does not negative wilifulness. Willfulness consists in an intentional, deliberate refusal, rather than an inadvertent or accidental refusal, or a refusal that was unintentional or based on a misunderstanding.

In the light of all the evidence, the Court finds the defendant guilty on all counts.



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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 787

LLOYD BARENBLATT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The majority (Pet. 19-34) and two dissenting opinions (Pet. 34-37, 38) in the Court of Appeals, sitting *en banc*, which were rendered following this Court's remand of the case (354 U.S. 930) for consideration in the light of *Watkins* v. *United States*, 354 U.S. 178, have not yet been reported. The original opinion of the three-judge division of the Court of Appeals (Pet. 39-59) is reported at 240 F. 2d 875.

JURISDICTION

The judgment of the Court of Appeals following this Court's remand was entered on January 16, 1958 (Tr. 240). The petition for a writ of certiorari was filed on February 15, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether this Court, in *Watkins* v. *United States*, 354 U.S. 178, invalidated the authorizing resolution of the House Committee on Un-American Activities as too vague to support the compulsory taking of testimony in any inquiry whatsoever.

2. Whether, in the circumstances presented by this record, and in the light of the principles enunciated in *Watkins*, petitioner was apprised of the subject of the Committee's inquiry, and the pertinency of the questions he refused to answer, with sufficient definiteness to sustain his conviction for willfully refusing to answer those questions.

3. Whether petitioner's conviction is invalid because the motives of the Committee members in questioning him were, allegedly, solely to "expose" him as a Communist.

4. Whether the Committee's authorizing resolution empowered it to conduct an inquiry into the Communist Party's infiltration and penetration of the field of education.

5. Whether the Committee's authorizing resolution, as construed and applied in this case, constituted an unlawful abridgment of petitioner's First Amendment rights.

STATUTE AND RULE INVOLVED.

2 U.S.C. 192 (R.S. 102, as amended) and the pertinent provisions of Rule XI of the Rules of the House of

Representatives [1] (as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, 828) are set forth in Appendix A to the petition for certiorari (Pet. 17-18).

STATEMENT

Petitioner was charged in a five-count indictment (Tr. 201-2), returned in the United States District Court for the District of Columbia, with having refused, in violation of 2 U.S.C. 192 (Pet. 17), to answer five questions, pertinent to the matter under inquiry, put to him by a subcommittee of the Committee on Un-American Activities of the House of Representatives—whether he then was or ever had been a member of the Communist Party (counts 1 and 2), whether he had known one Francis Crowley as a member of the Communist Party (count 3), and whether he (petitioner) had ever been a member, while a student at the University of Michigan, of the "Haldane Club of the Communist Party" (count 4) or of the "Council of Arts, Sciences, and Professions" (count 5). Petitioner, having waived his right to a trial by jury (Tr. 145-146), was found guilty by the court on all counts (Tr. 192) and was sentenced generally to six months' imprisonment and to pay a fine of $250 (Tr. 199, 215).

On appeal to the Court of Appeals for the District of Columbia Circuit, the judgment of conviction was, on January 3, 1957, unanimously affirmed by a three-judge division of that court (Pet. 39-59; 240 F. 2d 875). Thereafter, this Court, on June 24, 1957, on petition for

[1] These Rules were adopted by the House at the commencement of the Eighty-Third Congress as the rules of the House for that Congress (H. Res. 5, 83d Cong., 1st sess. (G. Ex. 2, Tr. 42, 44), 99 Cong. Rec. 15, 16, 18, 24). It was during that Congress that the refusals to answer questions here involved occurred (June 28, 1954).

a writ of certiorari to review this judgment, granted the petition, vacated the judgment of affirmance, and remanded the case to the Court of Appeals "for consideration in light of *Watkins* v. *United States,* 354 U.S. 178" (354 U.S. 930). The case was thereafter rebriefed and reargued in the Court of Appeals, which *sua sponte* determined to hear the case on remand *en banc*. On January 16, 1958, the Court of Appeals again affirmed the judgment of conviction (Pet. 19-34), four judges dissenting (Pet. 34-38).[2]

The pertinent facts may be summarized as follows:

On February 25, 1953, the Committee on Un-American Activities of the House of Representatives commenced a series of public hearings in connection with an investigation which it was conducting into "Communist Methods of Infiltration" into the field of "Education" (G. Ex. 7, p. 1; Tr. 50).[3] Immediately prior to interrogating the first witness, Representative Velde, the Committee Chairman, made an opening statement setting forth the nature and purpose of the investigation (*id.*, pp. 1-3).[4] The investigation, the Chairman

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[2] The majority opinion was written by Circuit Judge Bastian, who also authored the opinion of the original three-judge division. Chief Judge Edgerton wrote a dissenting opinion in which Circuit Judge Bazelon joined (Pet. 34-37), and Circuit Judge Fahy wrote a separate dissenting opinion in which Circuit Judge Washington joined (Pet. 38).

[3] Government Exhibit 7 is the printed transcript (part 1) of the Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., February 25, 26, and 27, 1953, entitled *Communist Methods of Infiltration (Education)*.

[4] This statement by the Committee Chairman is reproduced in full as an appendix to the original opinion of the Court of Appeals (Pet. 56-59) and is again referred to in the majority opinion of the *en banc* court upon remand (Pet. 26).

said, was one of a series of investigations which the Committee had been conducting into "Communists and Communist activities wherever it has substantial evidence of its existence" (*id.*, p. 1). "The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field" (*id.*, p. 2). Pointing out that "[t]he committee is charged by the Congress with the responsibility of investigating the extent, character, and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and all other questions in relation thereto that would aid Congress in any necessary remedial legislation," the Chairman observed (*id.*, p. 2):

> It has been fully established in testimony before congressional committees and before the courts of our land that the Communist Party of the United States is part of an international conspiracy which is being used as a tool or weapon by a foreign power to promote its own foreign policy and which has for its object the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence, if necessary. * * *

The Chairman further said that, since "Communism and Communist activities cannot be investigated in a vacuum," the "investigation must, of necessity, relate

to individuals" (*ibid.*). "[T]he objective of this investigation," the statment concluded,

> is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party (*id.*, p. 3).

The Committee thereupon proceeded with the taking of testimony (*id.*, p. 3). Witnesses heard on that day and from time to time thereafter during the year 1953 presented to the Committee "facts within their own knowledge concerning Communist efforts to infiltrate and dominate the teaching profession within the United States" (G. Ex. 9, p. 9; Tr. 61).[5] Illustrative of the testimony was that of the first witness, Robert Gorham Davis, who admitted that he had been, from 1937 to the fall of 1939, a member of a Communist cell on a university campus which included faculty members, teaching fellows, and graduate students (G. Ex. 7, pp. 4, 6). The members of this cell, Davis testified, received instructions and directives from the Communist Party through a paid functionary of the Party (*id.*, pp. 8, 35). From time to time, they were addressed by Party functionary Philip Frankfeld, whose purpose it was to "educate" them politically (*id.*, pp. 8, 10).[6] They would seek to attain positions of leadership in various organizations for the purpose of seeing to it that the policies of such organizations "would be as close to the

[5] Government Exhibit 9 is the *Annual Report of the Committee on Un-American Activities for the Year 1953* (H. Rep. No. 1192, 83d Cong., 2d sess.).

[6] Frankfeld was one of the defendants convicted in a Smith Act trial. See *Frankfeld* v. *United States*, 198 F. 2d 679 (C.A. 4), certiorari denied, 344 U.S. 922.

policies desired by the Communist Party as possible" (*id.*, p. [redacted]). Their primary target in this respect was the local "Teachers' Union" (*id.*, pp. 10, 30). Prior to meetings of the Teachers' Union, the members of the cell used to discuss the policies which they would urge on the Union and the candidates which they would propose and support (*id.*, pp. 9, 11). They would also "endeavor to control the selection of delegates from the local Teachers' Union" to "district" and "national conventions" (*id.*, p. 11). At a caucus of the Communist members of the Teachers' Union preceding a certain convention in New York City which Davis attended, Jack Stachel addressed the group for the purpose of "determin[ing] the policies of the Communists" (*id.*, pp. 19-21).[7]

Davis testified that the following "sum[ming] up" of "the substance" of his testimony by Committee member Jackson was accurate: that the Communist Party (1) sought to "recruit teachers and professors" into the Party, (2) "la[id] down certain broad policies which these teachers and professors were expected to follow," (3) expected such recruited teachers to "infiltrate other teacher groups with the idea of putting forward policies and directives enunciated by the Communist Party," (4) "exercise[d] generally, on behalf of the Communist Party, what influence they could," and (5) "influence[d], to the extent possible, the election of group leaders * * * who were individuals known to be favorable to the policies of the Communist Party" (*id.*, p. 41).

During 1954, the Committee continued its inquiry into Communism in education. On June 28, 1954, Francis

[7] Stachel was one of the defendants in the Smith Act prosecution which culminated in *Dennis* v. *United States*, 341 U.S. 494.

Crowley, in the presence of petitioner (G. Ex. 8, pp. 5802-03),[8] testified before the Committee (*id.*, pp. 5755-83). In introducing Crowley to the Committee, the committee counsel said in part (*id.*, p. 5754):

> The field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley.
>
> It will deal with activities in Michigan, Boston, and in some small degree, New York.

Crowley testified extensively as to his Communist Party activities while he was enrolled as a student at the University of Michigan from August 1947 to June 1950 (*id.*, pp. 5761-5782). While a student there, he said, he was a member of the "Neafus Club," a Party organization comprised of undergraduate students which operated, for the most part, on a secret basis (*id.*, pp. 5762-64). He testified that the Club had "a great deal of influence" (*id.*, p. 5770) and used "every method that Communists could devise to influence the student body opinion in the direction of the Communist movement" (*id.*, p. 5770).

Early in 1950, Crowley further testified, he transferred to the "Haldane Club" of the Communist Party, a group composed of graduate students and teaching fellows at the University (*id.*, p. 5773), which was "even more secret" than the Neafus Club (*id.*, p. 5774). Through his membership in the Haldane Club, Crowley testified, he was "propagandized into believing" that South Korea was the aggressor in the Korean war (*id.*,

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[8] Government Exhibit 8 is the printed transcript of the Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 2d sess., June 28 and 29, 1954, entitled *Communist Methods of Infiltration (Education—Part 9)*.

p. 5781). Although the Club appeared to him at the time to be chiefly "an intellectual group, discussion group" (*id.*, p. 5781), he "definitely" felt, as of the time of his testifying, that the Communist Party was "a conspiracy and not a political party" (*id.*, p. 5783).

Crowley also testified that he shared an apartment with petitioner while they were both graduate students at Michigan in 1950 and that petitioner was likewise a member of the Haldane Club of the Communist Party during that time (*id.*, pp. 5777-8).

Following Crowley, the Committee heard the testimony of Robert H. Silk (*id.*, pp. 5783-91), Norman Cazden (*id.*, pp. 5791-6), and Lester Beberfall (*id.*, pp. 5796-5801), all of whom were identified by Crowley as fellow members of the Communist Party with him at the University of Michigan at some time during the period 1947-1950 (*id.*, pp. 5772-3, 5778). These witnesses were questioned about their Communist Party activities at the University of Michigan and at other educational institutions (*id.*, pp. 5784-86, 5792-3, 5795, 5797-800). All three, admitting that they heard Crowley's testimony concerning them, invoked their privilege against self-incrimination and refused to answer all such questions (*id.*, pp. 5784, 5792, 5797).

Petitioner, who also had heard Crowley's testimony (*id.*, pp. 5802-3), was next called to testify (*id.*, p. 5801). He admitted that he had been a teaching fellow at the University of Michigan from 1948 to 1950 (*id.*, p. 5813) and that he knew Crowley (*id.*, p. 5802), but refused to state, after having been specifically ordered to do so, whether he then was or ever had been a member of the Communist Party (*id.*, pp. 5805-6, 5812) and to answer the other questions forming the subject-matter of the various counts of the indictment (*id.*, p. 5812; see

supra, p. 3). In so refusing, he specifically disclaimed reliance on his privilege against self-incrimination (*id.*, pp. 5805-6). His refusals were based, he said, on his belief that the questions asked involved an inquiry into his "political beliefs," "religious beliefs," "personal and private affairs," and "associational activities," and that any such inquiry was "beyond the powers of this committee" (*id.*, pp. 5806-7). He did not ask the Committee to explain how the questions which he refused to answer were pertinent to the subject of the inquiry, or to state what that subject was, nor did he give any indication that he was not fully aware of the pertinency of the questions to the subject of inquiry.

The Committee thereafter reported the fact of petitioner's contumacy to the House of Representatives. In its report (H. Rep. 2457, 83d Cong., 2d sess. [G. Ex. 4, Tr. 43], reproduced at 100 Cong. Rec, 11609-11613), the Committee notified the House of petitioner's appearance before it and his refusal to answer Committee questions (100 Cong. Rec. 11609). It advised the House that petitioner's refusals had "deprived your committee of necessary and pertinent testimony and places the said witness in contempt of the House of Representatives of the United States" (100 *id.* 11613).

The exact questions which petitioner refused to answer (see *supra*, p. 3) were stated in the report (100 Cong. Rec. 11609), which also set forth in its entirety the transcript of petitioner's testimony before the Committee, including the context in which the questions were propounded and petitioner's stated reasons for refusing to answer them (100 *id.* 11609-11613).[9] The

[9] Included in this transcript, as reproduced in the report, was the formal statement of petitioner's objections to the Committee's questions, which the Committee had incorporated in full in the

report was, on July 23, 1954, "by direction of the Committee on Un-American Activities," submitted to the House, on the floor of the House, by Committee Chairman Velde (100 *id.* 11609) and read by the Clerk (100 *id.* 11609-11613). The Committee Chairman then offered a resolution—H. Res. 666, 83d Cong., 2d sess. (G. Ex. 5, Tr. 43), set forth at 100 Cong. Rec. 11613—resolving that the Speaker of the House certify the Committee's report of petitioner's refusals, "together with all of the facts in connection therewith," under the seal of the House to the United States Attorney for the District of Columbia, to the end that petitioner be proceeded against as provided by law. The House agreed to the resolution (100 Cong. Rec. 11613), and petitioner's prosecution followed.

ARGUMENT

1. Petitioner contends (Pet. 11-12) that "Congress did not authorize the Committee to make *any* inquiry" (Pet. 11, emphasis added), and that the decision below, insofar as it refused so to hold, "conflicts with *Watkins*" [354 U.S. 178] (Pet. 12). This contention, which has the support of two of the dissenting judges (Chief Judge Edgerton and Judge Bazelon, Pet. 34-36), but not of the other two (Judges Fahy and Washington, Pet. 38), assumes that *Watkins* held, in the words of Chief Judge Edgerton (Pet. 34), that "the Committee on Un-American Activities had no authority to compel testimony"—*i.e.*, on any subject whatever—"because it had no definite assignment from Congress." The

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transcript as "Barenblatt Exhibit No. 1" (100 Cong. Rec. 11611-11612). This statement, as noted by the Court of Appeals (Pet. 29), was in the nature of a "legal brief attacking the jurisdiction of the committee * * *."

argument is that this Court in *Watkins*, to use the expression of the majority opinion below (Pet. 21, 23), "struck down" the House Un-American Activities Committee's authorizing resolution as invalid. We submit, however, that the majority are correct in their conclusion that, while this Court on several grounds and "in no uncertain terms" "*criticised* the resolution creating the Committee" (Pet. 21, emphasis added), it did not invalidate it.

In the first place, as the majority note (Pet. 23), if this Court "had intended to strike down the resolution, it would have said so in so many words. It would not have left so vital an issue to inference or interpretation." For "[t]he far-reaching result of such a holding would be that the Committee, established by action of the entire House of Representatives, would be rendered helpless and would not even be able to summon a witness, much less have him testify" (*ibid.*). And "nowhere in the *Watkins* opinion does the Court use language essential to effectuate [such a] result * * *" (*ibid.*). Second, as the majority further note (Pet. 23), had this Court "struck down the resolution creating the Committee the matter would have been ended, without the further, extended discussion found in *Watkins*."[10] Third, as the opinion of the Court of Appeals also observes (Pet. 24), this Court "cited in *Watkins* a

[10]As also remarked by the majority in this connection, "it is clear [this] Court," in *Watkins*, "was familiar with the present case as it is specifically referred to in note 34 of the opinion in *Watkins*. The Court certainly knew, therefore, that Barenblatt's conviction grew out of testimony taken under the same resolution" (Pet. 23-24). Indeed, as the majority goes on to note, "it is reasonable to assume that, had the resolution under which both Watkins and Barenblatt were questioned been stricken in its entirety, this case would have been *reversed* on authority of *Watkins* rather than *remanded* for consideration 'in light of' that opinion" (Pet. 24).

number of cases, both in that Court and in Courts of Appeals, bearing on convictions sustained under the same resolution," without any intimation that such cases should have been or could have been "decided by the simple process of voiding the resolution establishing the Committee." Fourth, Mr. Justice Frankfurter's concurring opinion (354 U.S., at 216-217)—stating his understanding of the Court's holding—does not indicate that holding to be that the Committee's charter was void or wholly incapable of supporting a contempt conviction.

All these considerations show, in our opinion, that, contrary to the views of Judges Edgerton and Bazelon, *Watkins* did not invalidate the Committee's authorizing resolution.

2. What *Watkins* did hold was that that petitioner had not been sufficiently apprised of the pertinency of the questions to an authorized subject under inquiry. Because of the vagueness of the Committee's authorizing resolution, *and* because Watkins could not have known—from such *other* indicia as the opening remarks of the chairman, members, or counsel of the Committee; the nature of the proceedings; the questions themselves; and the chairman's response to an objection based on pertinency (see the majority opinion below, Pet. 23)—what the precise subject under inquiry was, and how the particular questions were pertinent to it, he was under no duty to answer. In the totality of the circumstances presented in that case, including but not limited to the lack of precision in the terms of the Committee's authorizing resolution, the Court held that Watkins could not have known and was not apprised, with the degree of definiteness required by the Due Process Clause to sustain a criminal conviction for willful re-

fusal to answer questions of a congressional committee pertinent to the subject under inquiry, what that subject was and the "connective reasoning" (*Watkins*, 354 U.S., at 215) whereby the questions which he refused to answer were pertinent.

Petitioner argues here (Pet. 14-15) that, similarly, his conviction cannot be sustained "because of the Committee's failure to apprise [him] of the pertinency of the inquiry" (Pet. 14). We submit, however, that it is quite clear from the Statement, *supra*, pp. 4-10, that as the majority opinion (at Pet. 26-33) demonstrates,[11] petitioner was thoroughly aware at the hearing of the subject under inquiry ("communism in education" (Pet. 27)), and how the particular questions (*supra*, p. 3) were germane to that subject. Since petitioner does not, in our opinion, seriously challenge this conclusion (see Pet. 14-15; and footnote 9, *supra*),[12] there is no occasion to elaborate on the detailed showing in the opinion below that petitioner knew, when testifying, the nature of the subject of inquiry, and fully appre-

[11] In this respect, it is important to note, neither dissenting opinion takes issue with the majority.

[12] Referring to one of the many factors mentioned by the court below as evidencing his awareness of the subject of inquiry and the pertinence of the questions—*viz.*, certain statements by Representatives Doyle and Velde quoted by the court at Pet. 31-32—petitioner argues that these statements were made "after the petitioner's testimony was concluded" and so "cannot be held to have put petitioner on notice of the nature of the inquiry" (Pet. 14). The statements in question were made, however, while petitioner was still on the stand (G. Ex. 8, pp. 5813-5814); and, moreover, they constituted but one of many indications noticed by the court below as evidencing petitioner's awareness of the subject of inquiry and the pertinency of the questions. The court stated that it referred to the statements merely "[t]o indicate the length to which the Subcommittee went to indicate to Barenblatt the pertinency of the questions, even though the question of pertinency was not raised by him" (Pet. 31).

ciated the "connective reasoning" by which the precise questions related to it.

Suffice it to emphasize that petitioner admitted having heard the testimony of witness Crowley, who testified shortly before petitioner (*supra*, pp. 8-9); that the committee counsel, in introducing Crowley to the Committee, stated that the "field covered" would be "communism in education" and Crowley's "experiences and background in the party" (*supra*, p. 8); that the bulk of Crowley's testimony concerned his Communist Party activities at the University of Michigan (G. Ex. 8, pp. 5761-5782); and that Crowley identified petitioner as a member of the Party's Haldane Club at that university (*supra*, p. 9). The questions which petitioner refused to answer (*supra*, p. 3) were plainly pertinent to Crowley's testimony and the announced subject of the inquiry. Petitioner, furthermore, never raised the issue of pertinency nor otherwise indicated that he was not completely aware of how the questions were pertinent [13] (*supra*, pp. 9-10). The court below was therefore correct, we submit, in determining that this petitioner knew the subject of inquiry and the rational connection between it and the unanswered questions.

3. Petitioner cites a sentence in the Committee's 1954 *Annual Report* (H. Rep. No. 57, 84th Cong., 1st

[13] The law applicable to a witness who does not make known to a congressional committee that he is objecting to its questions on grounds of lack of pertinency is stated in *Sinclair v. United States*, 279 U.S. 263, 299, cited with approval in the *Watkins* case (354 U.S. at 208): "Intentional violation is sufficient to constitute guilt. There was no misapprehension as to what was called for. The refusal to answer was deliberate. The facts sought were pertinent as a matter of law, and § 102 made it appellant's duty to answer. He was bound rightly to construe the statute. His mistaken view of the law is no defense."

sess. (G. Ex. 10)), in which it was stated that "[t]he 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" (p. 15; Pet. 13); from this, he argues that "[t]he legislative inquiry, and the resulting conviction, were unconstitutional and unlawful because of its unlawful purpose to expose petitioner" (Pet. 13). He relies on this Court's observation in *Watkins* that it had "no doubt that there is no congressional power to expose for the sake of exposure" (354 U.S. at 200).

However, the very passage of the *Watkins* opinion which contains this observation of the Court goes on to state (*ibid.*):

> * * * The public is, of course, entitled to be informed concerning the workings of its government. [Footnote reference omitted] That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals. *But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served.* [Emphasis added.]

Then, in a footnote reference, the Court adds (354 U.S. at 200, fn. 34):

> Compare the treatment of this point in *Barenblatt* v. *United States*, 240 F. 2d 875, 880-881 [and other cited cases].

This Court thus pointed to the treatment of this subject by the court below in its prior opinion in this case (which opinion the court incorporates by reference in its post-remand opinion; see Pet. 33).[14]

4. Next, it is argued (Pet. 10-11) that, assuming that *Watkins* did not hold the Committee's authorizing resolution to be invalid on account of vagueness, that decision, when "read together with" *Sweezy* v. *New Hampshire*, 354 U.S. 234 (decided the same day as *Watkins*), establishes at least that the resolution did not authorize the Committee to inquire into "the field of education" (Pet. 10).

(*a*). This case is distinguishable from *Sweezy* in at least two decisive respects. In the first place, the basic difficulty which the principal opinion in the *Sweezy* case[15] found with that conviction was that it was for refusing to answer questions by a committee of one man (the New Hampshire Attorney General), to whom the New Hampshire Legislature had delegated total and uncontrolled responsibility for conducting the inquiry which it had authorized, and for seeing to it that only such information as the Legislature desired, and nothing more, be sought through the use of the subpoena power (354 U.S. at 251-255).[16] Petitioner's

[14] This issue is not a point of difference between the majority opinion below and either of the dissenting opinions. See also our reply to this contention in our brief in opposition to petitioner's former petition for certiorari (No. 742, Oct. Term, 1956, pp. 13-14).

[15] *I.e.*, the opinion of Chief Justice Warren, in which Mr. Justice Black, Mr. Justice Douglas, and Mr. Justice Brennan joined.

[16] In *Sweezy*, the New Hampshire Legislature authorized the State Attorney General, as a one-man legislative committee, to conduct an investigation to determine whether "subversive" persons (as defined by statute) were located in the State. The Attorney General was authorized to act on his own motion and on such in-

conviction is not vulnerable to this criticism. Here, unlike *Sweezy*, the House of Representatives retained at all times responsibility for the actions of its Committee, which could only report to its parent body and recommend action with respect to recalcitrant witnesses. Here, unlike the situation which obtained in *Sweezy* (see fn. 16, *supra*), the House itself cited petitioner for contempt and referred his case to the United States Attorney for prosecution. It took this action, furthermore, only after being fully apprised, through a documented committee report, of the circumstances surrounding the calling of petitioner as a witness, the nature of the inquiry in which the Committee was engaged, and the exact questions which he refused to answer. See *supra*, pp. 10-11.

Secondly, while the New Hampshire Attorney General's interrogation of Sweezy touched upon some of

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formation as in his judgment was reasonable or reliable. He was given the power of subpoena, but not the power to hold witnesses in contempt. Pursuant to this authorization, the Attorney General summoned Sweezy, interrogated him on various subjects, and, upon Sweezy's refusal to answer certain questions, filed a petition in the Superior Court of Merrimack County asking that the court propound the questions to the witness. The court, deeming the questions pertinent, summoned Sweezy as a witness, and, on his continued refusal to answer, adjudged him in contempt. The Legislature had no part in the process save for its initial general authorization to the Attorney General to conduct an investigation. (354 U.S. at 236-245.)

Thus, as the principal opinion observed (354 U.S. at 254):

> * * * neither we nor the state courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the legislature wanted to be informed when it initiated this inquiry. The judiciary are thus placed in an untenable position. Lacking even the elementary fact that the legislature wants certain questions answered and recognizing that petitioner's constitutional rights are in jeopardy, we are asked to approve or disapprove his incarceration for contempt.

the philosophic aspects of Communism as an abstract body of thought, such as, for example, whether or not he advocated "Marxism" or espoused the theory of "dialectical materialism" (see 354 U.S. at 243-244), the questions which he was convicted for refusing to answer related primarily to his connections and associations, not with the Communist Party, but with the *Progressive* Party, and persons with whom he was acquainted in that organization (see 354 U.S. at 239-244).[17] This is the aspect of the *Sweezy* case which, for Mr. Justice Frankfurter, with whom Mr. Justice Harlan joined, was decisive (see 354 U.S. at 264-267).[18] The Committee's inquiry in the case at bar, on the other hand, was concerned with the *Communist* Party's infiltration and penetration of the field of education, and the questions asked of petitioner were limited to his

---

[17] The principal opinion points out that it was not clear from the record whether the New Hampshire Supreme Court, in affirming Sweezy's conviction, intended to include a question about Sweezy's "belief in Communism" among the questions with respect to which it affirmed, but that it was unnecessary, in the view which the Justices joining in that opinion took, to "resolve affirmatively" that that particular question "was or was not included in the decision by the State Supreme Court" (354 U.S. at 245).

[18] Thus, Mr. Justice Frankfurter, after pointing out that Sweezy stated, in response to questions at the hearing, that he "did not know of any Communist interest in, connection with, influence over, activity in, or manipulation of the Progressive Party" (354 U.S. at 264), observed that (at 266):

> * * * Whatever, on the basis of massive proof and in the light of history, of which this Court may well take judicial notice, be the justification for not regarding the Communist Party as a conventional political party, no such justification has been afforded in regard to the Progressive Party. A foundation in fact and reason would have to be established far weightier than the intimations that appear in the record to warrant such a view of the Progressive Party. [Footnote reference omitted] This precludes the questioning that petitioner resisted in regard to that Party.

participation, as a graduate university student, in Communist Party activities.[19]

(*b*). We cannot accept the suggestion that the authorizing resolution of the House Committee on Un-American Activities—while conferring on the Committee authority to inquire into the Communist Party's infiltration and penetration of the labor movement, government, the motion picture industry, the press, the armed forces, and other segments of our national life and economy—does *not* authorize it to inquire into that same organization's infiltration and penetration of the field of education, where the pertinency of the inquiry is clear. Education does not require special authorization from the House before its Committee, which otherwise conducts its investigations into Communism under its general charter, may conduct an inquiry into Communist penetration of it. Certainly, the House, the parent body of the Un-American Activities Committee, has not so construed its own resolution creating that Committee and defining its powers. For the House has, in effect ratified the Committee's interpretation of its authorizing resolution as permitting an inquiry into Communism in education. That it has done so is evidenced not only by its biennial renewal of the Committee's charter, unchanged, after the Committee's inquiries into this field, but also by the very fact that it cited petitioner for contempt, on the Committee's recommendation, pursuant to the Committee's report of all the details of petitioner's recalcitrance, which included the fact that the inquiry at which the recusancy occurred was into Communism in *education* (*supra*, pp.

[19] Unlike Sweezy, the questions petitioner refused to answer did not relate to teaching or the contents of classes.

10-11). We submit that this interpretation by the House of its own resolution should be conclusive.

There is, furthermore, additional proof that Congress did not intend the Committee's inquiries to stop short of a proper inquiry into the extent of Communist infiltration into education. Congress, at the time of petitioner's appearance before the Committee, had already taken action in accordance with the findings of the Committee in this area. Thus, as noted in the former opinion of the Court of Appeals in this case (Pet. 52), shortly before petitioner's appearance before the Committee, Congress, pursuant to the Committee's recommendation that it should "[w]ithhold all Federal financial support from any educational institution which permits members of its faculty to advocate communism, fascism, or nazism as a substitute for our form of government to the student body * * *," enacted section 228 of the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 667, 38 U.S.C. 933 (G. Ex. 9, pp. 144-5). This section prohibits the payment by the Veterans Administration of any educational and training allowance to any otherwise eligible veteran who enrolls for any course in any educational institution which is listed by the Attorney General as totalitarian, Fascist, Communist, or subversive. And even had there been no such affirmative action on the part of Congress, it would be only reasonable to assume that Congress intended its committees' inquiries into Communism and Communist infiltration of various areas of the national life to extend, properly conducted, to the area of education. For, as the Court of Appeals also pointed out in its former opinion (Pet. 52), "American colleges and universities are holders of contracts with the Government to conduct a variety of

research projects of far-reaching consequence to the national security."

5. Finally, there is no merit, we submit, in petitioner's argument (Pet. 12-13) that the House Un-American Activities Committee's authorizing resolution constitutes "an unconstitutional invasion of his freedom of speech, political and academic association and communication in violation of the First Amendment" (Pet. 12). This Court's *Sweezy* decision, 354 U.S. 234, which petitioner cites for the contention, establishes no such proposition. That Congress itself has the power to inquire into, and to legislate with respect to, the subjects of Communism and the Communist Party, in areas in which they may have an impact, is, we submit, well settled. *American Communications Assn.* v. *Douds*, 339 U.S. 382; *Galvan* v. *Press*, 347 U.S. 522; *Harisiades* v. *Shaughnessy*, 342 U.S. 580; *Barsky* v. *United States*, 167 F. 2d 241 (C.A.D.C.), certiorari denied, 334 U.S. 843; *United States* v. *Josephson*, 165 F. 2d 82 (C.A. 2), certiorari denied, 333 U.S. 838. This, indeed, is implicit in the *Watkins* decision itself, 354 U.S. 178. See also our discussion of this point in our brief in opposition to petitioner's former petition for certiorari (No. 742, Oct. Term, 1956, pp. 9-12).

CONCLUSION

For these reasons, we submit that the decision below is correct and not contrary to the holdings in *Watkins* or *Sweezy*, and that the petition for a writ of certiorari should therefore be denied.

If the Court should be of the view that the issue whether the Committee's authorizing resolution empowers it to investigate Communism in the field of

education (in the way in which it was done here) is doubtful and of such importance as to require issuance of the writ, it is suggested that the writ be limited to that question, since the other issues in the case—including the issue of whether petitioner was sufficiently apprised of the pertinency of the questions—do not in our opinion call for examination by this Court.

If, on the other hand, Judges Edgerton and Bazelon are correct in the view that *Watkins* held the Committee's authorizing resolution to be invalid, we submit that it would be appropriate for the Court to reverse the judgment below summarily, on that ground, without further briefs or arguments.

Respectfully submitted.

J. Lee Rankin,
Solicitor General.
William F. Tompkins,
Assistant Attorney General.
Philip R. Monahan,
Doris H. Spangenburg,
Attorneys.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 35

LLOYD BARENBLATT, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS AS AMICUS CURIAE

RALPH F. FUCHS
1785 Massachusetts Ave., N.W.
Washington, D. C.
Attorney for American Association of University Professors, Amicus Curiae

RALPH S. BROWN, JR.
LEO A. HUARD
Of Counsel

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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---

BRIEF OF AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS AS AMICUS CURIAE

INTEREST OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

The American Association of University Professors is the largest organization of individuals in the field of higher education in the United States and Canada. It has approximately 40,000 members, 35,000 of whom are active members currently engaged in teaching and

research in nearly 1,100 approved colleges and universities. Since its founding in 1915 the Association has spoken for the academic profession in many matters of educational concern, and has been especially active with respect to academic freedom and tenure, which it deems essential to the educational process. Although the Association has supported freedom and tenure primarily by professional means, it recognizes the role of legal doctrines and actions in relation to education. Hence it desires to present its best thought regarding certain of the issues involved in the present case, for consideration by the Court.

Since 1948 the American Association of University Professors has been deeply concerned with legislative investigations into alleged Communist subversion on college and university campuses in relation both to the investigations themselves and to their effects on student attitudes and the performance and tenure of faculty members. The Association has published reports concerning the dismissal or non-reappointment of 19 members of college and university faculties in the wake of investigations by Congressional or State legislative committees; and additional instances have come to its attention. The Association also regards academic strength and productivity as an element of national security, and is therefore concerned with the effective administration of higher education and with the preservation of legislative powers to foster higher education. It recognizes that the issues presented in the context of the present case are delicate and complex, and it presents this statement with recognition of the competing claims involved.

Petitioner and Respondent have given written consent to the filing of this Brief.

STATEMENT OF CASE

The Association refers the Court to the briefs of the parties for full statements of the case. Here only those aspects essential to an understanding of the argument advanced in this brief are presented in detail.

Petitioner appeared pursuant to subpoena before a subcommittee of the House Committee on Un-American Activities on June 28, 1954. At the opening of that day's hearings Committee counsel, in response to a request by the Chairman to state the purposes "for this hearing this morning," said in part:

> The field covered will be in the main communism in education and the experiences and background in the party of Francis X. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York. (Gov't Ex. 8,[1] pp. 5753-4).

Crowley's testimony relating to petitioner included statements that he had known petitioner, in 1950 or

---

[1] Hearings Before the House Committee on Un-American Activities on Communist Methods of Infiltration (Education—Part 9), 83d Cong., 2d Sess. (1954). This series of hearings began on Feb. 25, 1953, with a statement by the Chairman describing the purpose of the investigation. This statement (Hearings, Pt. I, 83d Cong., 1st Sess., pp. 1-3, also set forth as an Appendix to the opinion of the Court of Appeals, 240 F. 2d 875, 884-6) concluded as follows:

> The committee is equally concerned with the opportunities that the Communist Party has to wield its influence upon members of the teaching profession and students through Communists who are members of the teaching profession. Therefore, the objective of this investigation is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.

earlier, as a member of the "Haldane Club of the Communist Party" at the University of Michigan, an organization which Crowley described as "chiefly an intellectual group, discussion group." (Gov't Ex. 8, pp. 5773-4, 5778, 5781-2.) He also testified:

> I am convinced that he has left it, the Communist Party.
>
> Mr. Kunzig: Your close knowledge of him was up to about 1950?
>
> Mr. Crowley: Yes, I have seen him a few times since then, occasional visits. (Gov't Ex. 8, p. 5778.)

Petitioner himself testified that he was a graduate student at the University of Michigan during the period 1947-50 and a teaching fellow in psychology during most of that time. (Gov't Ex. 8, pp. 5802, 5813.) From 1950-1954 he was an instructor in psychology at Vassar College. His contract there expired June 15, 1954, after he had been subpoenaed. (Gov't Ex. 8, pp. 5811, 5813.)

He refused to answer the following questions of the Committee:

> Are you now a member of the Communist Party?
>
> Have you ever been a member of the Communist Party?
>
> Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?
>
> Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?
>
> Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions?

Petitioner offered to the Committee an elaborate statement setting forth the reasons for his refusal, which did not include any claim of privilege against self-incrimination. (Gov't Ex. 8, pp. 5807-10.) The Committee in due course fully reported these events to the House of Representatives. The House agreed to a resolution that the Speaker certify the Committee's report to the United States Attorney for the District of Columbia. (100 Cong. Rec. 11609-13; Gov't Brief on Petition for Writ of Certiorari, pp. 10-11.)

Petitioner was charged with a violation of 2 U.S.C. sec. 192, in an indictment containing five counts—one for each question he refused to answer. Found guilty by the court on all counts, he appealed to the Court of Appeals for the District of Columbia, which affirmed the judgment of conviction. 240 F. 2d 875. On petition for a writ of certiorari, this Court granted the petition, vacated the judgment of affirmance, and remanded the case to the Court of Appeals "for consideration in light of *Watkins* v. *United States*, 354 U.S. 178." 354 U.S. 930. The Court of Appeals then heard the case *en banc*, and on January 16, 1958 again affirmed the judgment of conviction, four judges dissenting. 252 F. 2d 129. Petitioner's application to this Court for a writ of certiorari was granted April 14, 1958.

QUESTION DISCUSSED BY AMICUS, AND SUMMARY OF ARGUMENT

The American Association of University Professors as *amicus curiae* wishes to direct the Court's attention to the following question presented by the present case:

> Whether compulsion to answer the questions which the petitioner refused to answer, viewed in the

context of the kind of investigation the House Committee on Un-American Activities was conducting, was consistent with due legal protection to academic freedom.

The Association takes no position on other issues that may be raised by the granting of the writ of certiorari. Its concern is limited to legal protection of the vital interest of colleges and universities in academic freedom, as that interest arises in the circumstances of this case. Due protection involves interpretation of the investigating committee's mandate and, in the last analysis, the rights safeguarded by the First Amendment.

This Court has already recognized, notably in *Sweezy* v. *New Hampshire*, 354 U.S. 234 (1957), that legislative investigations may encroach on "freedom of communication of ideas, particularly in the academic community." 354 U.S. at 245. The scope of legislative investigations of the academic community and its members must, it is clear, be carefully circumscribed in order to avoid conflict with the First Amendment or, in the States, with the Fourteenth Amendment. In general such investigations must be pertinent to legitimate legislative purposes. These purposes are limited, as respects the Congress, to matters of Federal concern. Coercive invasion of the privacy and freedom from upheaval that are essential to academic endeavors must also be minimized. Cf. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; 78 S. Ct. 1163 (1958).

The threatened punishment of the petitioner in this case appears as a link in a chain of acts which constitute an unwarranted trespass by the legislature on academic freedom. The American Association of

University Professors does not assert that academic freedom should receive unqualified immunity from compulsory legislative investigations. In this connection as in other a balance must be struck between the legislature's demands and interests needing protection. *N.A.A.C.P.* v. *Alabama, supra.* Nor does the Association's position depend on the individual rights to the First Amendment freedoms which teachers possess in common with other people. Rather it emphasizes the immunity from unwarranted coercion which adheres to a member of the academic community as a representative of that community. That immunity protects the workable autonomy that academic institutions require in order to carry out their educational and research responsibilities.

The record of recent history shows that the questioning of petitioner and other teachers about political beliefs and associations, even when the questioners were concerned only with what they deemed to be dangerous subversion, has had a seriously damaging effect, both directly and through other forces which the investigations have released. The same record shows that conditions in the academic community created little justification for such questioning. The data obtained or obtainable would not have formed the basis for valid legislative action; and the exercise of academic autonomy provided adequate protective measures against abuse of academic freedom.

As a consequence of these arguments, the Association urges that the Court may properly find that Congress did not authorize the Committee on Un-American Activities to make an investigation of education that would include the compulsory disclosures required of petitioner. If the mandate of the Committee is found

to include such an authorization, then the Association argues that the authorization as carried out in this case is an unconstitutional abridgement of rights protected by the First Amendment.

On either ground, the judgment of the court below should be reversed.

ARGUMENT

1. Since the First Amendment Protects Academic Freedom Against Congressional Abridgement, Congressional Investigations of Universities and Faculty Members Must be Carefully Circumscribed.

Opinions of a majority of this Court in the recent case of *Sweezy* v. *New Hampshire*, 354 U.S. 234 (1957), readily establish this general proposition. The opinion of the Chief Justice, in which Mr. Justice Black, Mr. Justice Douglas, and Mr. Justice Brennan joined, said:

> There is no doubt that legislative investigations, whether on a federal or state level, are capable of encroaching upon the constitutional liberties of individuals. It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas, particularly in the academic community. (354 U.S. at 245.)

The same opinion went on to say:

> The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon

> the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die. (354 U.S. at 250.)

The opinion of Mr. Justice Frankfurter, in which Mr. Justice Harlan joined, concurring in the result, spoke in even more emphatic terms of "the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university." (354 U.S. at 262.)

These statements must, of course, be related to the broad power of Congress to conduct investigations, which this Court has often recognized. Cf. *Sacher* v. *United States*, 356 U.S. 576, 577 (1958). As outlined in *Watkins* v. *United States*, 354 U.S. 178 (1957), that power "encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes." (354 U.S. at 187.) However, the investigative power, in its coercive aspect, must be carefully circumscribed so far as inquiry into education is concerned, to avoid unwarranted interference with the operation of educational institutions. The rights of privacy of the members of academic communities, which, like the right involved in *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 78 S. Ct. 1163 (1958), require protection, are essential to the conduct of academic institutions.

Only the strongest reasons can justify their impairment. The principal reason relied upon in the original and final opinions of the court below in support of the questioning of petitioner was that the investigation was not primarily into education, but one directed at communism, with only incidental impact on education. Even so that impact, if real, must be justified by the end sought to be served and by the need for it in order to serve that end. This central issue will be considered in the next part of this argument. At this point it is desirable to deal with two related issues under the present general heading.

The court below in its original opinion suggested two examples of possible reasons for legitimate Congressional intervention in educational affairs inspired by considerations of internal security. One was a provision of the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 667, 38 U.S.C. § 933, forbidding educational allowances to veterans for any courses in an educational institution while it is "listed by the Attorney General under section 3 of part III of Executive Order 9835, as amended." This reference is to the Attorney General's list of subversive organizations considered by this Court in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123 (1951). Without reviewing the implications of the several opinions in that case, it is enough to say that the propriety of using the Attorney General's list as a legislative standard has been seriously challenged, and is still not authoritatively resolved. See *Rudder* v. *U. S.*, 226 F. 2d 51 (D.C. Cir. 1955); *Kutcher* v. *Housing Authority of the City of Newark*, 20 N.J. 181, 119 A. 2d 1 (1955); Note, 69 Harv. L. Rev. 551 (1956). It does not appear, moreover, that the Act which is cited furnishes any justification for in-

vestigating the affairs of institutions not on the Attorney General's list.

The other example suggested by the court below was the Government's interest in defense and other contracts held by universities. The Association does not question the proper concern of Congress with the honest and efficient spending of public funds; but it earnestly contends that the granting of government funds to universities (or their acceptance) does not open the door to unrestricted questioning of faculty members about their political and academic associations, especially where there is no security problem created by access to classified information. The executive branch of the Government has conceded as much by accepting the well-supported conclusion of a committee of the National Academy of Sciences that loyalty investigations of grantees of federal funds for non-sensitive research should be abandoned.[2]

---

[2] Report of the Academy's Committee on Loyalty in Relation to Government Support of Unclassified Research dated March 13, 1956, released April 4, 1956, reprinted in part in 12 Bulletin of the Atomic Scientists 227 (1956). Assistant to the President Sherman Adams advised the National Academy, in a letter released Aug. 14, 1956 (see N. Y. Times, Aug. 15, 1956, p. 8, col. 3), that government agencies would "follow practices consistent with the recommendations" of the report.

Among the memorable observations of the report are the following:

> A fundamental contribution leading ultimately to the cure of cancer, providing it were made generally available, would be no less beneficial to all humanity for having been made by a communist. Authentic scientific progress carries with it no ideological flavor from its source . . . .
>
> "Yet the idea persists that the Government in granting funds for research confers a favor upon scientists as individuals. We consider this contrary to the fact. In appropriating funds for the support of research, we believe the Congress to have been motivated by an urgent national need.

The question of Congressional power to protect federal appropriations is not actually raised by the petitioner's case. Nevertheless, it may be appropriate to pursue this argument a bit further, especially since Federal aid to higher education may become of increasing importance. The Association would be loath to see adopted, as a general guide to action, the idea that the giving of funds bestows a general power of control on the giver. The principle that the one who pays the piper may therefore call the tune has been discredited many times in the history of our educational institutions, and it should not be revived at a moment when the size of governmental payments is growing ever greater. Nothing could be more harmful to the autonomy of the state universities, which are dependent on grants from their legislatures, or to the autonomy of the private institutions, which are indirectly supported by tax exemptions, than the acceptance of this theory of purchase and control.

Furthermore, where rights under the First Amendment are put in jeopardy, the power of government to impose conditions on its spending, see *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 127 (1940), is subject to significant restrictions. These restrictions are admirably analyzed in Willcox, *Invasions of the First Amendment Through Conditioned Public Spending*, 41 Cornell L.Q. 42 (1955), and need not be further developed here. Nor can a legislature which by statute has conferred rights, privileges, or immunities that could be withdrawn, like those that stem from the maintenance of a state university, impair their enjoyment by methods violative of constitutional or statutory right, *Speiser* v. *Randall*, 357 U.S. 513, 78 S. Ct. 1332 (1958); *First Unitarian Church* v.

County of Los Angeles, 357 U.S. 545, 78 S. Ct. 1350 (1958); cf. *Quintana* v. *Holland*, 255 F. 2d 161 (3d Cir. 1958); *United States ex rel. Accardi* v. *Shaughnessy*, 347 U.S. 260 (1954).

2. This Investigation, and the Questions Petitioner Was Directed To Answer, Unjustifiably Infringed His Freedom as a Member of the Academic Community and Thereby Invaded the Autonomy Which Is Necessary to Colleges and Universities.

a. The Nature and Necessity of Academic Autonomy.

Academic freedom is often defined in terms of

> the right claimed by an accredited educator, as teacher and as investigator, to interpret his findings and to communicate his conclusions without being subjected to any interference, molestation, or penalization because these conclusions are unacceptable to some constituted authority within or beyond the institution. (MacIver, *Academic Freedom in Our Time* (1955), p. 6.)

The Association of course adheres to this as one meaning of academic freedom, and welcomes its recognition by the Court as a right to be protected against governmental infringement. But it does not rest the present argument primarily on the rights of faculty members as individuals nor does it claim any special privileges for teachers as persons, beyond those that arise from their academic responsibilities.

It prefers, instead, to emphasize a second ground, namely, that academic freedom also belongs to a teacher in his representative capacity as a member of the academic community. The threatened punishment of petitioner is a link within a chain of acts which ends in the trespass by the Government on

certain immunities essential to academic institutions. The constitutional issue takes its form from these facts. In the case under review, the real antagonists were the Government and the university; the interrogation of the teacher was a form of governmental attack; the infringement of his freedom impinged upon him as an agent of the university community and thereby injured that community.

One of the essential preconditions of academic freedom—of freedom in teaching and research—is unhampered control by the university over employment and dismissal of its faculty. It is the key to the door that guards the

> intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen until finally, perchance, it may become a part of the accepted intellectual food of the nation or of the world. (*1915 Report of the Committee on Academic Freedom and Tenure of the American Association of University Professors*, reprinted in 34 AAUP Bulletin 141 (1948).)

Once this key is surrendered to an external body, be it public or private, the university becomes an adjunct and dependency of that body, and loses its *raison d'etre* as an arbor for the cultivation of new ideas. Once this key is surrendered, academic freedom disappears. Direction of curriculum and instruction, honesty in speech and publication—all that stands in need of academic freedom and justifies it—rest upon the principle of autonomy.

It would not be accurate to say that the universities have always guarded this principle as jealously as they

should. For reasons resting in history, our universities lack that independence of spirit and those organs of faculty control which characterize and give protection to their sister institutions abroad. Our universities are governed by laymen; our administrators, wrestling with budgets, have been known to please and appease prospective donors; our local communities have not refrained from telling the universities what to do. Fortunately, private individuals and groups tend, because of their multiplicity, to neutralize one another, and the university, if it will, can maintain itself amidst conflicting pressures. Though instances of professors fired because of outside private pressure are not unknown in the annals of academic freedom, happily they are rare. A different situation exists, however, when these vulnerable institutions of higher learning face the monopolistic power of the state, and when the state with legal panoply summons professors to speak to charges of disloyalty and subversion. In such cases, the area of maneuverability is constricted, and the pressure upon the institution is often impossible to resist.[3]

[3] The authors of this brief *amicus curiae* are greatly indebted to an analysis of the nature and needs of academic institutions, which was prepared for their use by Professor Walter P. Metzger of the Department of History at Columbia University. The outstanding study, *Development of Academic Freedom in the United States* (1955), of which Professor Richard Hofstadter and he are the authors, contains a wealth of detail with regard to the origins, organization, and pertinent characteristics of American colleges and universities. The members of the Court are referred to this volume for significant data in support of the argument here made. Professor Metzger is currently a member of the 37-member Council of the American Association of University Professors, which has discussed the substance of this brief and has approved it in outline. See also Caughey, *In Clear and Present Danger*, 143-5 (1958), for an analysis of academic freedom and autonomy by a former Vice-President of the Association.

b. The Harmful Effects of This and Similar Investigations on Academic Autonomy.

The activities of the House Committee on Un-American Activities and other state and federal investigating committees with similar aims have frequently precipitated dismissals from college and university faculties, as well as nonrenewal of term appointments that would otherwise have been extended. In most of the cases occurring in the last decade, a refusal to answer questions put by a committee (based either on the privilege against self-incrimination, or, as in the instant case, on other constitutional grounds) has stimulated the administration of an employing institution either to dismiss summarily or to institute proceedings that ultimately led to dismissal.

Nineteen cases from twelve institutions have been the subjects of reports by the Association. Since these reports give a fairly detailed account of each case, and of its relationship to the investigating committee's interrogation, reference is made to them in the footnote.[4] The reports make clear that in some instances

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[4] HCUA—House Committee on Un-American Activities.
ISC—Internal Security Subcommittee of the Senate Judiciary Committee.

Name of Institution	Number of dismissals	Investigating Comm. Involved	Reference to AAUP Bulletin
			vol. page
Dickinson College	1	HCUA	44:137
New York University	1	ISC	44:22
	1	HCUA	
Ohio State University	1	HCUA	42:81
Reed College	1	HCUA	44:102
Rutgers University	2	ISC	
	1	HCUA	42:77
Temple University	1	HCUA	42:79
University of Kansas City	1	ISC	43:177
University of Michigan	2	HCUA	44:53
University of Southern California	1	HCUA	44:151
University of Vermont	1	ISC	44:11
University of Washington	3	State Legislature	42:61
Wayne University	2	HCUA	42:87

the faculty members concerned, as well as the administrations, were not without fault; but the impact of the investigations upon the academic community is not diminished by that fact.

In addition to these cases there were fourteen dismissals from New York City Municipal Colleges (see 42 AAUP Bulletin 71 (1956)), following refusals to testify before Congressional committees, under Section 903 of the New York City Charter, which was held invalid by this Court in *Slochower* v. *Board of Higher Education*, 350 U.S. 551 (1955).

In one instance the House Committee on Un-American Activities is said to have injected itself into an investigation of three faculty members of the Jefferson Medical College in Philadelphia that was being made by the administration of the College. The professors, who were at odds with the administration over a demand that they name persons they had known as Communists in their own alleged past associations with the Party, were served with subpoenas from the Committee while in the Dean's office; only one however was actually called to testify. Here is an episode where, it must be said, the College administration apparently showed little regard either for academic autonomy or for academic due process.[5]

A similar instance of committee activities affecting colleges and universities is described in sworn testimony by R. E. Combs, counsel to the California Senate Committee on Un-American Activities. He testified before the Internal Security Subcommittee of the

[5] See American Civil Liberties Union, Greater Philadelphia Branch, *Academic Freedom: Some Recent Philadelphia Episodes* 21 (1954); 42 AAUP Bulletin 75 (1956).

Senate Judiciary Committee[6] that a number of California college and university presidents arranged to obtain "clearance" from the state committee for new appointments to their faculties, and to receive privately "derogatory information" on their existing staffs.

These reported episodes by no means include all the relevant dismissals. Furthermore, they take little account of cases where, following committee activity, a faculty member was induced to resign to avoid either further notoriety or outright dismissal.[7]

However, it should be noted to the credit of the academic community, there have been notable instances reported where university administrations resisted the pressures of investigating committees and other interests that were threatening academic autonomy.[8]

It cannot be successfully argued that the committees are entirely inculpable because they do not fire professors and do not claim the right to do so. It is true that the university authorities make the final decision. But there is here an interplay between governmental and academic action which makes the latter a likely consequence of the former, with public clamor precipitated by the investigation as an additional causal factor.

This Court in *N.A.A.C.P.* v. *Alabama*, 357 U.S.

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[6] Hearings, Subversive Influence in the Educational Process, 83d Cong., 1st Sess. pp. 605-22 (1953).

[7] Lazarsfeld and Thielens, *The Academic Mind: Social Scientists in a Time of Crisis* (publication pending; see p. 21, below), contains in ch. 2 some data on forced resignations and failures to reappoint.

[8] See 42 AAUP Bulletin 94-6 (1956).

449, 463, 78 S. Ct. 1163, 1172 (1958), said of a related situation: "It is not sufficient to answer, as the state does here, that whatever repressive effect compulsory disclosure of names of petitioner's members may have upon participation by Alabama citizens in petitioner's activities follows not from *state* action but from *private* community pressures. The crucial factor is the interplay of governmental and private action, for it is only after the initial exertion of state power . . . that private action takes hold." See also the opinion of the Court in *Watkins* v. *United States,* 354 U.S. 178, 197-8 (1957), where, after reviewing the evil effects of "forced revelations . . . of past beliefs, expressions, or associations," the Court said, "that this impact is partly the result of non-governmental activity by private persons cannot relieve the investigators of their responsibility for initiating the reaction."

When coercion begets capitulation, it must take prior blame. This coercion need not be overt or cast in legal form. When a teacher in a college or university is called before a legislative committee investigating subversive activities, and is asked under penalty of contempt to name his political associations, the very raising of the question, the very summons itself, casts a pall of suspicion upon him that makes him less serviceable to his institution. The university, forced to choose between keeping a teacher whose name has been beclouded, and dismissing him in order to preserve its own good name, is burdened with a harsh dilemma and suffers undue constraint. It is sometimes argued that this constraint will be avoided if the faculty member answers all the questions and proves his innocence. This argument is misleading. For one thing, the teacher may thus be forced to choose

between giving up constitutional privileges or giving up his job. For another, vindication may not be easy to achieve. Charges speak louder than denials; discredit attaches to notoriety, however innocently incurred. But these are not the main objections to this line of argument. Coercion is not less real or harmful because it produces ready compliance. It might as well be suggested that the university has nothing to fear as long as its private donors, after questioning members of the faculty, raise no issue with professors who agree with their point of view. The effect of such pressures on objective scholarship is obviously stultifying.

The encroachment on academic autonomy was enlarged in this case by the content of certain of the questions which dealt with the witness's campus activities while he was a graduate student at the University of Michigan. A university, like a spiritual order, must train its own candidates and novitiates to the standards designed for the calling. Were no more than this process interfered with, academic autonomy would be a shadow lacking substance. For, one may ask, what does it profit a university if it control the machinery of dismissal but cannot shape the material for appointment? And, of what use is academic freedom, as a formal guaranty, if those who aspire to teach are conditioned in their schooldays to prefer a posture of safety to the exercise of their freedoms? These questions are not rhetorical, or irrelevant to this case. The extra-curricular is intimately bound with the curricular: to investigate the *academic* associations of a *student* is to place the whole area of instruction, of faculty-student relations, of student rights and discipline, under governmental control.

To ask a student to defend his participation in a campus organization, to subject this association to current standards of judgment rather than to those contemporary with it, to proceed perhaps to ask for the names of his schoolfellows who were his associates, is to subdue by frightening example any tendency toward nonconformity and the expression of thought through action in the student generation of today.

There have been many expressions of concern over the depredations outlined above.[9] A thorough-going and scientific study of the effects on social scientists of all the pressures particularly identified with the years from 1948 to 1955 has recently been completed and is awaiting publication.[10] This study is based on interviews in 1955 with a large sample of 2451 social scientists from 165 four-year liberal arts colleges and universities. It attempted to discover, among other matters, the extent to which the respondents felt that their own professional independence had been impaired or was jeopardized. Analyzing the responses to many questions, the authors suggest that almost half (46 per

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[9] See, *e.g.*, the special committee report, *Academic Freedom and Tenure in the Quest for National Security*, 42 AAUP Bulletin 49 (1956); Barth, *The Loyalty of Free Men* ch. ix (1951); Hutchins, *The Meaning and Significance of Academic Freedom*, 300 The Annals 72 (1955); Taylor, *The Dismissal of Fifth Amendment Professors*, id at 79; MacIver, *Academic Freedom in Our Time* 46-53 (1955).

[10] Lazarsfeld and Thielens, *The Academic Mind: Social Scientists in a Time of Crisis* (1958). Some of the findings presented here in quite condensed form are summarized less tersely by Lyford in *Social Science Teachers and the "Difficult Years,"* 43 AAUP Bulletin 636 (1957). Since the material in this brief is drawn from a manuscript, courteously made available by the authors and the publisher, page references are not given.

cent) of the respondents were significantly apprehensive, in that they were worried about what might happen to them, or had taken precautionary measures to avoid interference with their teaching or their positions. A more precise measure of insecurity is furnished by reports of altered professional behavior—by 12 per cent of the respondents who said that they were "more careful" not to recommend reference material to students that might be criticized as too controversial, and by 9 per cent who said they had actually "toned down" something they had written because it "might cause too much controversy."

A primary source of apprehension was a large number—990—of "incidents" described by the respondents—the word "incident" being used to signify an "episode, long or short, in which an attack, accusation, or criticism is made against a teacher; a group of teachers, or a school as a whole." A majority (54 per cent) of the charges made in these incidents were political (as distinguished from religious, racial, economic and other controversial matters); 29 per cent related directly to charges of communism and subversiveness. It is of interest that of the 269 respondents who had themselves been involved in an "incident" 73 per cent were rated as "apprehensive." The degree of apprehension also rose with the number of incidents in his institution of which a respondent was aware.

As would be expected, the charges of close Communist associations and sympathies appeared to have the most serious consequences, measured by the proportion of reported dismissals or resignations under pressure. And—coming at last to the role of the investigating committees in all this—the committees

initiated "the bulk of the Communist party membership charges" (mostly referring to past membership). "About a quarter of the accusations brought by governmental investigating committees against teachers involved past membership in the Communist Party, subversion, and other extremist political positions, compared to 2 per cent of those made by all other sources." It should be said that while the charges made by the investigating committees were more damaging, they at least tended to be more specific than the often vague charges of communism and subversion that emanated from the local community or from the college community itself. The frequency of charges from these local sources (they amounted to almost half of the charges the sources of which were identified) absolves the investigating committees from a measure of direct responsibility; but there remains (though it cannot be measured) the indirect effect of the profuse publicity which the committees have sought and obtained for their exposures.

A comparable study which would cast light on the effects of the investigations on students, especially those preparing for a career in teaching, does not seem to have been made.[11]

c. Justification for This Investigation Was Lacking.

In view of the harmful effects of congressional investigations of education outlined above, the Association submits that the asserted justification for this investigation is inadequate. In suggesting this

[11] Many of the respondents in the Lazarsfeld-Thielens study shared the widely-held opinion that students are less willing to join unpopular student organizations or to express unpopular views in the classroom than they were in 1948-49.

approach to judgment, it recognizes that the invasions of constitutional privileges in this case are not so direct and punitive as to authorize an almost automatic condemnation. Cf. *De Jonge* v. *Oregon*, 299 U.S. 353 (1937); *Herndon* v. *Lowry*, 301 U.S. 242 (1937).

The claims of academic freedom cannot be asserted unqualifiedly. The social interest it embodies is but one of a larger set, within which the interest in national self-preservation and in enlightened and well-informed law-making also prominently appear. When two major interests collide, as they do in the present case, neither the one nor the other can claim *a priori* supremacy. But it is in the nature of our system of laws that there must be demonstrable justification for an action by the Government which endangers or denies a freedom guaranteed by the Constitution.

The weight and sources of such justification may of course vary with the setting of the conflict. If, for example, an act of Congress is called into question, the deliberation of the legislators in enacting a statute, and the Congress's own balancing of interests, are given considerable weight. A conspicuous example of this approach is *American Communications Ass'n* v. *Douds*, 339 U.S. 382 (1950). That case involved a statute, enacted pursuant to the extensive power of Congress to regulate commerce.

But the instant case lies in an area where the legislative policy to authorize these inquiries is not embodied in a statute and has been obscurely expressed. *Watkins* v. *United States*, 354 U.S. 178 (1957). A proper deference to the guarantees of the Bill of Rights, particularly those of the First Amendment, should militate here against facile acquiescence

in the Committee's activities. See *Sweezy* v. *New Hampshire*, 354 U.S. 234, 261, 266 (concurring opinion); Cahn, *The Firstness of the First Amendment*, 65 Yale L.J. 464 (1956); Mason, *The Core of Free Government, 1938-40; Mr. Justice Stone and "Preferred Freedoms"*, 65 Yale L.J. 597 (1956); Comment, *Legislative Inquiry Into Political Activity: First Amendment Immunity from Committee Interrogation*, 65 Yale L.J. 1159 (1956).

The main justification for the Committee's questioning of petitioner was its general investigation of the extent of Communist influence. The court below in its first opinion upheld the validity of the investigation, and found that its exercise in the educational field was not exceptionable.

> While it is true, as appellant points out, that Congress has broader powers to enact legislation in the field of labor than it does in the field of education, it is not true that persons who incidentally happen to be teachers have greater immunity from inquiry into their activities than do labor leaders and screen writers, when those activities relate to matters which are a legitimate concern of the Congress. (240 F. 2d 875, 882.)

This brief does not discuss the extent of the Committee's power to investigate Communism or other subversive ideologies outside of higher education. It does take issue with the failure of the court below to recognize that special considerations apply to the attempted extension of such inquiries into the field of education. When subversion is the subject of investigation and a member of an academic community is involved, these investigations almost invariably invade the intellectual life of the institution. The existence

of such an invasion is especially notable, when, as here, the individual's beliefs and campus associations are called in question.

Nor can the doctrine of justified "incidental effects" rely on a contention that the inquiry into subversion touched the faculty member not as teacher or scholar but as citizen. Of course there are situations where such a clear-cut division would obtain—for example, if a teacher were questioned about a criminal offense like murder or arson, or, on the other side, if he were questioned solely about the contents of his lectures. But the situation of the petitioner—and it is common in inquiries of this kind—was one in which the two roles overlapped. He was accused neither of a legal crime nor of dereliction of duty as a teacher; yet his responses to the questions might have led to either charge. Certain questions had to do with his affiliations outside the university; others had to do with his affiliations within. All the questions broached, if only implicitly, the subject of political ideology, which is referable alike to scholarship and to civic action. When the questions show no seam, the witness's roles are indivisible. Unending, unbounded, non-specific, these investigations do not aim at a circumscribed target, which on occasion they may miss, but aim at a very wide field, hoping to hit a mark. The needs of academic freedom require that such broadsides be curtailed.

Finally, there is no showing that the academic community, in the exercise of the autonomy here defended, was incapable of correcting any abuses of academic freedom that may have occurred. The teaching profession has been fully aware of the possibility that a few of its members might misuse their positions to engage either in dishonest indoctrination in the class-

room, distorted research, or illegal extracurricular activities. It has engaged in a lively discussion of the standards of procedure and proof that should govern such cases, especially in the vexed instance of the Communist teacher.[12] This discussion has been cast against a background of recognized institutional and professional responsibility for academic competence and behavior, and of procedures in virtually every college and university for purging academic ranks of those unworthy to remain. Neophytes in the academic profession, like petitioner at the time of his questioning, are under especially close scrutiny. Nationally formulated norms of academic freedom, tenure, and removal procedure, which leading organizations in the field of higher education maintain, are the reflection of practices developed within many institutions.[13]

It is the conclusion of the Association, based on close observation of the academic scene by its various organs, that the House Committee has followed (and indeed, has fostered) a greatly exaggerated impression of the number and influence of Communist teachers. Established instances of misconduct have been few; and the potentialities for improper indoctrination, which seem to cause the most serious concern, have given rise to the most serious misapprehensions. These

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[12] These discussions are summarized in Brown, *Loyalty and Security* 339-49 (1958); see also MacIver, *Academic Freedom in Our Time* ch. xi (1955).

[13] See *Academic Freedom and Tenure: 1940 Statement of Principles*, 44 AAUP Bulletin 290-92 (1958); *Statement on Procedural Standards in Faculty Dismissal Proceedings*, *id.* at 270-274. Both of the foregoing statements were framed and adopted by the Association of American Colleges and the American Association of University Professors, and the former has been endorsed by seven other academic organizations.

misapprehensions derive largely from a failure to appreciate two facts. First, the overwhelming majority of teachers, like the overwhelming majority of Americans, are loyal and honest. Second, their influence with students has far outweighed that of a handful of conspirators or dupes. In any event, the proper tool for weeding out the unfit and the unfaithful is the established mechanism of the academic community, not the steam roller of the investigating committee.

3. Congress Should Not Be Taken To Have Authorized the House Committee on Un-American Activities To Investigate Education and To Compel Petitioner To Answer the Questions He Refused To Answer. If Such Authorization Was Attempted, It Must Fall As Violative of the First Amendment.

In view of the vagueness of the resolution creating the Committee, it is hard to tell what investigations the House of Representatives authorized it to pursue. *Watkins* v. *United States*, 354 U.S. 178 (1954). A decision that the House did not authorize the investigation that was made by the Committee would be consonant with the common supposition that the Congress would not intend to authorize an investigation that raised such grave constitutional problems.

It must be recognized, on the other hand, that this investigation lasted for more than one session, and that the House may have been mindful of it in renewing the Committee's appropriations. There is also the fact that the House voted, in effect, to prefer contempt charges against petitioner. This brief does not argue the question whether implied authority can be "squeezed out" of such data (see *Watkins*, *supra*, at 217 (concurring opinion)). It does contend that,

if authority is found, it is the duty of this Court to declare the unconstitutionality of the kind of investigation of education and teachers that the Committee made, because of its abridgement of rights guaranteed to the petitioner by the First Amendment.

CONCLUSION

For all of the reasons set out in this brief, it is respectfully submitted that the petitioner could not be compelled to answer the questions that he refused to answer; therefore his conviction must be reversed.

RALPH F. FUCHS

Attorney for American Association of University Professors, Amicus Curiae

RALPH S. BROWN, JR.
LEO A. HUARD

Of Counsel

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IN THE

Supreme Court of the United States

October Term, 1958

No. 85

LLOYD BAREA BLATT,

Petitioner,

v.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

No. 34

WILLARD UPHAUS,

Appellant,

v.

LOUIS C. WYMAN, Attorney General, State of New Hampshire,

Appellee.

On Appeal from the Supreme Court of New Hampshire

BRIEF OF NATIONAL LAWYERS GUILD AS *AMICUS CURIAE*

Samuel Wm. [illegible]
[illegible] West 57th Street,
New York, New York.

[illegible] M. Cox,
[illegible] Bell Building,
Pensacola, Florida,

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IN THE

Supreme Court of the United States

October Term, 1958

No.

LLOYD BARENBLATT,

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v.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No.

WILLARD UPHAUS,

Appellant,

v.

LOUIS C. WYMAN, Attorney General, State of New Hampshire,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW HAMPSHIRE

BRIEF OF NATIONAL LAWYERS GUILD AS *AMICUS CURIAE*

The Interest of the National Lawyers Guild

This brief is filed with the written consent of all parties to these cases. The National Lawyers Guild solicited this consent because of its concern, as a national bar association, with the preservation of the constitutional rights

of the people against governmental encroachment. In its view the present cases are significant because their decision may determine whether, as appeared indicated by *Watkins* v. *United States*, 354 U. S. 178, and *Sweezy* v. *New Hampshire*, 354 U. S. 234, the end is in sight to the unprecedented (354 U. S., at p. 195) era of inquisition into thoughts and associations in ways boldly adapted from the Star Chamber and Court of High Commission by the Dies Committee in the late 1930's and since carried forward by certain Congressional committees and other inquisitorial bodies.

The National Lawyers Guild believes that such bodies are in fundamental conflict with the Constitution in their disregard of the inviolability of ideas and peaceful associations, for their basic assumption appears to be that security and freedom are inherently incompatible, that the demands of security are paramount and, thus, that the road to security lies through repression.

The product of this assumption has been the technique of public exposure as a means of suppressing the ideas of which these bodies do not approve. Often there is no possible purpose to their activities except the instigation of black-lists, reprisals, and public hostility, of which these bodies then make pious disclaimer. See *Watkins* v. *United States*, 354 U. S., at p. 198. Cf. *N. A. A. C. P.* v. *Alabama*, 357 U. S. —, 2 L. ed. (2) 1488.[1]

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[1] One of the results of the continued activity of Congressional and state bodies investigating the political and social beliefs of witnesses has been the establishment, in several Southern states, of state committees investigating the activities of the National Association for the Advancement of Colored People and of Negro and white supporters of this Court's desegregation decision in *Brown* v. *Board of Education*, 347 U. S. 483 (1954). This problem is now before this Court in the case to be argued with *Ephaus, Scull* v. *Virginia ex rel. Committee on Law Reform and Racial Activities*. And see Robison, *Protection of Associations from Compulsory Disclosure of Membership*, 58 Col. Law Rev. 614, 615-19 (May 1958).

There is scarcely any phase of the intellectual and cultural life of America which these bodies have considered beyond their reach, whether in politics, science, religion, philosophy, music, painting, literature, education, entertainment, or the professions. They have self-construed their vague grants of authority as sufficiently broad to permit investigation of any and every kind of organizational relationship, whether fraternal, social, political, economic, educational, or otherwise, and of every kind of propaganda, including limitless inquiries into any and all ideas, opinions, beliefs and associations and any and all individuals and organizations. Their main interest has been "names" and they themselves have asserted, established and determined the pertinency of their questions in their pursuit of "Un-American" and "subversive" persons and propaganda.

The effects of the committees' activities as an impediment to free expression and to free association in our country [2] have been recognized by the National Lawyers Guild and others from the inception of these bodies. Their procedures, which readily accept hearsay, hearsay on hearsay, unsubstantiated gossip and unqualified opinion and which deny the basic rights of confrontation and cross-examination, the effective aid of counsel, and the right to produce and to compel the production of evidence, lend themselves easily to smear and to the destruction of careers and reputations without any of the traditional and historic safeguards of due process.

---

[2] The petitioner and appellant in the present cases are persons whose occupations deal with ideas, the one a college teacher and the other a philosopher and religious thinker. Of the many Americans who have refused to answer questions put to them by such committees, thirty who based their refusals on pertinency or First Amendment grounds were prosecuted for contempt. Aside from the petitioner and appellant these defendants included eight college professors, one public school teacher, one playwright, two attorneys, four newspapermen, two radio announcers, two union organizers, a librarian, two actors, one folk singer, and one engineer. (Cases listed and described in the *Civil Liberties Docket*, Volumes II and III, at #271 [National Lawyers Guild].)

Watkins and *Sweezy*, by restating "several basic premises on which there is general agreement" (*Watkins* v. *United States*, 354 U. S., at pp. 187-8) projected the hope that these activities would be brought to an end as the Constitution requires that they should. For the limitations which our constitutional scheme of government imposed upon such legislative sponsored investigations were thus summarized:

> "• • • There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. This was freely conceded by the Solicitor General in his argument of this case. Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to and in furtherance of a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible.
>
> "• • • The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedom of speech, press, religion, or political belief and association be abridged." (354 U. S., at pp. 187-8).
>
> • • •
>
> "We have no doubt that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals." (*Id.*, at p. 200).

Yet in these and the other (*Flaxer* v. *United States*, 354 U. S. 929; *Sacher* v. *United States*, *ibid.*; see also — U. S. —, 2 L. ed. (2) 987) cases remanded for reconsideration in the light of *Watkins* the courts below decided the issues in terms of the validity of the actions of the committee and

of the attorney general within the scope of their enabling resolutions. But in so doing, it seems to us, they erroneously passed over and assumed the constitutional validity of the resolutions themselves (see Judge Fahy's dissent in the opinion on the remand, joined in by Chief Judge Edgerton and Judge Bazelon in *Flaxer* v. *United States*, — F. (2) —, at p. —, slip opinion, pp. 3-4 [C. A. D. Col., No. 12027, April 3, 1958]).

In view of the narrow grounds of these holdings that the convictions are unaffected by *Watkins* and *Sweezy*, the National Lawyers Guild believes that the issues transcend the interest of these cases or of the particular petitioner and appellant, for they relate to whether the restatement of fundamental principles in *Watkins* and *Sweezy* marked a return to historic concepts of freedom in America or whether these principles are to be vitiated by a grudging application and narrow construction.

For no less than the weight and sanctity of the Court's trusteeship of the Bill of Rights is involved.

Introduction

In *Barenblatt* the alleged contempt of the Committee consists of the refusal of the petitioner to confirm or deny the testimony of a preceding witness that, while a graduate university student, he had been a member of a Marxist discussion group. In *Uphaus* the alleged contempt is in appellant's refusal to produce a list of guests at the summer camp of World Fellowship and correspondence with and concerning guest lecturers at the camp.

The National Lawyers Guild believes that there is no room under the Constitution, in *Barenblatt*, for a legislative interest in confirming, by exacting an admission, a particular university student's membership in a Marxist discussion group or, in *Uphaus*, for a state interest in compelling the production of a list of guests and lecturers

at a summer camp which seeks to bring together "for fellowship and discussion the representatives of all faiths to the end that there may be peace, brotherhood and plenty for all men, women and children." (*Uphaus* Petition, p. 18).

In our view the starting point for discussion is the command of the First Amendment that Congress shall make "*no* law" abridging speech, press or association. This would exclude Congress from the area of ideas and opinion, including peaceful political, intellectual, cultural or economic associations.

If it were assumed that there is still an allowable area for legislative action despite the sweep of the First Amendment and the reservation of non-delegated rights to the people by the Ninth and Tenth Amendments, then a definitive instruction to the agent from the principal, Congress, narrowly limiting the agent within the permissible bounds is constitutionally necessary. A general grant of power to investigate "subversive" or "Un-American" propaganda or activity is so hopelessly vague as to deny the possibility of an effective criterion for pertinence, and hence as a guide to the witness or as a standard for judicial review. Therefore in our view there is no power to subpoena because the grant of power is void for vagueness. Cf. *Winters* v. *New York*, 333 U. S. 507; *Lanzetta* v. *New Jersey*, 306 U. S. 451.

We believe that the issues are controlled by the Bill of Rights and not by a committee or staff member's elastic and *ad hoc* rationalizations of pertinency, or the clarity of a direction to answer, important as those issues are. For unless the Constitution controls over the committees' ever-expanding constructions of pertinency through free-wheeling lines of inquiry, the inherent vice of their enabling resolutions will ever continue to act as a pervasive restraint upon freedom of expression and association and as a trap for the witness who can determine the pertinency of a question only by jeopardizing his liberty in a prosecution for criminal contempt.

ARGUMENT

POINT I

The resolutions creating the House Committee and establishing these investigative functions of the New Hampshire Attorney General are both unconstitutional and void as abridgements of freedom of speech and assembly in violation of the First Amendment and, in *Uphaus*, the Fourteenth Amendment.

A. The House Committee Resolution Is a Pervasive Restraint Upon First Amendment Freedoms.

> "* * * Clearly, an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly. While it is true that there is no statute to be reviewed, and that an investigation is not a law, nevertheless an investigation is part of lawmaking. It is justified solely as an adjunct to the legislative process. The First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking." *Watkins* v. *United States, supra,* at p. 197.
>
> "The Bill of Rights is applicable to investigations as to all forms of government action." (Id., at p. 187.) See also *United States* v. *Rumely,* 345 U. S. 41; *United States* v. *Harris,* 347 U. S. 612.

The resolution on its face and as it has been consistently applied, including its application here to a Marxist discussion group, abridges the freedom of speech, discussion and political expression which is protected against governmental invasion by the First Amendment, since it is upon the unabridged exercise of these rights that free government depends. *De Jonge* v. *Oregon,* 299 U. S. 353; Cf. *Terminiello* v. *City of Chicago,* 337 U. S. 1; *Thomas* v. *Collins,* 323 U. S. 516; *Schneiderman* v. *United States,* 320 U. S. 118; *Thornhill* v. *Alabama,* 310 U. S. 88; *Cantwell* v. *Connecticut,* 310 U. S. 296; *Schneider* v. *State,* 308 U. S. 147; *Herndon* v. *Lowry,* 301 U. S. 242.

As Judge Edgerton noted in his dissent in *Barsky* v. *United States*, 167 F. (2d) 241, 255:

> "That the committee's investigation does in fact restrict speech is too clear for dispute. * * *
>
> "The effect is not limited to the people whom the Committee stigmatizes or calls before it, but extends to others who hold similar views and to still others who might be disposed to adopt them. It is not prudent to hold views or to join groups that the Committee has condemned. People have grown wary of expressing any unorthodox opinions. No one can measure the inroad the Committee has made in the American sense of freedom to think. There has been some suggestion that it restrains only timid people. I think it nearer the truth to say that, among the more articulate, it affects in one degree or another all but the very courageous, the very orthodox, and the very secure."

The peculiar characteristic of the functioning of this Committee, as the facts here show, is the exercise of the power of inquiry for purposes of exposure and harassment rather than for legislation.

The power to investigate is not an express, but an implied power. Therefore when investigation is attempted by Congress the inquiry is "whether it is properly an incident to an express power and necessary to its execution. If it be, then it may be executed by Congress. If not, Congress cannot exercise it." *United States* v. *Harris*, 106 U. S. 629, 636. Were it otherwise, the question of the assertion of the power to investigate or the use of implied powers as ends in themselves would effectively nullify all constitutional limitations on Congressional jurisdiction. *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 291; *United States* v. *Butler*, 297 U. S. 1, 64; *Kansas* v. *Colorado*, 206 U. S. 46, 81.

Congress not only lacks express power to legislate on peaceful speech and association, but it is expressly barred from doing so. For the command of the Constitution is that as to *all* speech Congress shall pass "*no* law" regulating content. Yet, since the terms of the resolution are so broad that their meaning can only be established by the opinions and prejudices of those applying them, they operate as a restraint upon all speech and associations.

A statute which invades protected liberties can be sustained, if at all, only if it is narrowly drawn to deal with the precise evil which may be and is sought to be curbed. *Schneider* v. *State, supra*; *Cantwell* v. *Connecticut, supra*; *De Jonge* v. *Oregon, supra*. It is impossible to discern any substantive evil, other than the conflict of ideas, to which the resolution is addressed. Cf. *Thornhill* v. *Alabama, supra; Winters* v. *New York, supra; Stromberg* v. *California*, 283 U. S. 359, 369; *Herndon* v. *Lowry, supra*, at 258. See Freund, *The Supreme Court and Civil Liberties*, 4 Vanderbilt Law Rev. 353, at 510 (1951).

Furthermore, vagueness is more objectionable in this area than in ordinary criminal statutes for a vague restraint upon civil liberties exerts an intimidating effect on speech generally and permits discriminatory application. *Lovell* v. *Griffin*, 303 U. S. 444.

A declaration of the invalidity of the Resolution underlying the Committee's limitless intrusions into First Amendment freedoms is thus the necessary means of ending them.

B. The Resolution Establishing the Power of Compulsory Process in the New Hampshire Attorney General to Investigate Into the Presence of "Subversive" Persons is Equally Void.

> "* * * It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as free-

dom of speech or press, freedom of political association, and freedom of communication of ideas, particularly in the academic community. Responsibility for the proper conduct of investigations rests of course, upon the legislature itself. If that assembly choose to authorize inquires on its behalf by a legislatively created committee, that basic responsibility carries forward to include the duty of adequate supervision of the actions of the committee. This safeguard can be nullified when a committee is invested with a broad and ill-defined jurisdiction."

Sweezy v. *New Hampshire, supra,* at p. 245.

Despite the foregoing considerations the broadth and scope of the New Hampshire resolution is so extensive that:

"* * * the basic discretion of determining the direction of the legislative inquiry has been turned over to the investigative agency. The Attorney General has been given such a sweeping and uncertain mandate that it is his decision which picks out the subjects that will be pursued, what witnesses will be summoned and what questions will be asked. * * *

"Instead of making known the nature of the data it desired, the legislature has insulated itself from those witnesses whose rights may be vitally affected by the investigation. * * *

"* * * Separating the wheat from the chaff, from the standpoint of the legislature's object, is the legislature's responsibility because it alone can make that judgment. In this case, the New Hampshire legislature has delegated that task to the Attorney General.

"As a result neither we nor the state courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the legislature wanted to be informed when it initiated this inquiry. * * *" (*Id.*, at pp. 253-4).

As a result of the inability to ascertain whether the questions relate to the legislature's area of interest it is impossible to determine whether the legislative interest is of sufficient importance to justify the infringement occasioned by the inquiry.

> "• • • The lack of any indications that the legislature wanted the information the Attorney General attempted to elicit from petitioner must be treated as the absence of authority. It follows that the use of the contempt power, notwithstanding the interference with constitutional rights, was not in accordance with the due process requirements of the Fourteenth Amendment." *Supra,* at pp. 254-5.

Therefore the effect of the resolution is to place freedom in jeopardy, for the conviction ignores these words in *Sweezy* (at pp. 250-1):

> "Notwithstanding the undeniable importance of freedom in the areas, the Supreme Court of New Hampshire • • • found such justification in the legislature's judgment, expressed by its authorizing resolution, that there exists a potential menace from those who would overthrow the government by force and violence. That court concluded that the need for the legislature to be informed on so elemental a subject as the self-preservation of government outweighed the deprivation of constitutional rights that occurred in the process.
>
> "*We do not now conceive of any circumstances wherein a state interest would justify infringement of rights in these fields*" (emphasis supplied). (*Id.,* at pp. 250-1).

POINT II

Neither the Committee nor the Attorney General has power to issue subpoenas.

The power to compel testimony under the impress of criminal sanctions makes greater the need for clarity and therefore emphasizes the vice of vagueness in the enabling resolutions.

Those summoned before the Committee or the Attorney General need answer only pertinent questions. *Sinclair* v. *United States,* 279 U. S. 263. Criminality of the refusal to

testify depends upon pertinency. The witness is therefore entitled to a clear frame of reference to determine pertinency, as the accused in any criminal case is entitled to the "explicitness and clarity that the Due Process Clause requires in the expression of any element of the criminal offense." 354 U. S., at p. 209.

The House Resolution provides no clue to pertinency. The only visible test for pertinency is the agility with which the Committee spokesmen devise *ad hoc* justifications for their inquiries under the unlimited scope of the enabling resolution. See *United States* v. *Reese*, 92 U. S. 214; *Cline* v. *Frank Dairy Co.*, 274 U. S. 445; *Winters* v. *New York, supra.*

Neither Congress nor the New Hampshire legislature have given to their grants of power that "measure of added care" which is necessary where the grant is of "compulsory process that gives rise to a need to protect the rights of individuals against illegal encroachment." 354 U. S., at p. 215.

Therefore neither the Committee nor the Attorney General has the power to issue subpoenas to compel testimony, since there is no adequate guidance nor ascertainable standards to determine pertinence.

Conclusion

Under our constitutional system this Court stands "against any winds that blow." *Chambers* v. *Florida*, 309 U. S. 227, 241. The Court, it has declared, will not permit its claim to guardianship of "free speech to become a hollow one." (*Thomas* v. *Collins, supra*, at 517.) For under our system of government the remedy for these invasions is with the courts. *West Virginia* v. *Barnette*, 319 U. S. 624, 638. Thoughtful citizens have long expressed

deep concern as to the inquisitional practices of such bodies (Commager, *Who Is Loyal to America*, Harper's Magazine (September, 1947); Note, 14 University of Chicago Law Review 416; Gellhorn, *Report on a Report of the House Committee on Un-American Activities*, 60 Harvard Law Review 1193; Barth, *The Loyalty of Free Men* (1951); Biddle, *The Face of Freedom* (1951); Carr, *The House Committee on Un-American Activities* (1952); Gossett, *Are We Neglecting Constitutional Liberty? A Call to Leadership*, 38 American Bar Association Journal 817; *Letter to The President by Members of Yale Law Faculty*, 4 American Bar Association Journal 15, 16). This concern should be allayed and the traditional concept that the First Amendment protects the privacy of the people from governmental inquisition into their views, beliefs and associations should be restored.

August, 1958.

Respectfully submitted,

NATHAN WITT,
160 West 77th Street,
New York, New York.

JOHN M. COE,
206 Bell Building,
Pensacola, Florida,

Counsel for National Lawyers Guild as Amicus Curiae.

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IN THE

Supreme Court of the United States

October Term, 1958

No. 35

LLOYD BARENBLATT,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONER

EDWARD J. ENNIS
NANETTE DEMBITZ
c/o American Civil Liberties Union
170 Fifth Avenue
New York 10, N. Y.

DAVID SCRIBNER
15 William Street
New York 5, N. Y.

Attorneys for Petitioner

ROWLAND WATTS
Of Counsel

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IN THE

Supreme Court of the United States

October Term, 1958

No. 35

LLOYD BARENBLATT,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONER

Opinions Below

The opinion and order of the Court of Appeals entered on January 16, 1958 (R. 291), upon remand by this Court, 354 U. S. 930, is reported at 252 F. 2d 129. The original opinion and order of the Court of Appeals dated January 3, 1957 (R. 271), from which petitioner petitioned for a writ of certiorari, is reported in 240 F. 2d 875. The District Court issued no opinion.

Jurisdiction

The opinion and judgment of the United States Court of Appeals was entered January 16, 1958 (R. 291). The peti-

tion for a writ of certiorari was granted on April 14, 1958 (R. 308). The jurisdiction of this Court rests on 28 U. S. C. 1254(1). See also Rule 37(b), F. R. Crim. P.

Constitutional and Statutory Provisions Involved

Constitution of the United States

Amendment I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V. No person shall . . . be deprived of life, liberty, or property without due process of law . . .

2 U. S. C. Section 192, R. S. 102, 52 Stat. 942, as amended:

> Refusal of witness to testify.
>
> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828) and House Resolution 5 of the 83rd Congress read in relevant part:

(b) Rule XI of the Rules of the House of Representatives is amended to read as follows:

RULE XI

Power and Duties of Committees

(1) All proposed legislation, messages, petitions, memorials, and matters related to the subjects listed under the standing committees named below shall be referred to such committees, respectively: . . .

17. Committee on Un-American Activities.

(a) Un-American Activities.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

Questions Presented

1. Whether all use of compulsory process by the House Committee on Un-American Activities is unauthorized, and also unconstitutional under the First and Fifth Amendments, because of the breadth and vagueness of Congress' purported grant of power to the Committee.

2. Whether Congress has authorized the House Committee on Un-American Activities to conduct by compulsory process an investigation in the field of education.

3. Whether compulsory process to force petitioner to answer the questions recited in the indictment should be deemed outside the House Committee's authority because such process violates the First Amendment.

4. Whether the House Committee adequately clarified for petitioner the subject of the investigation and the pertinence thereto of the questions recited in the indictment.

Statement

Petitioner, Lloyd Barenblatt, was convicted in the District Court for the District of Columbia under an indictment charging violation of 2 U. S. C., Section 192 for refusing to answer questions before a subcommittee of the House Committee on Un-American Activities (R. 67, 1). The indictment charged in substance that petitioner "unlawfully refused to answer" the following questions "pertinent to the question then under inquiry" before a subcommittee of the House Committee on Un-American Activities:

Count One: Are you now a member of the Communist Party?

Count Two: Have you ever been a member of the Communist Party?

Count Three: Now, you have said that you knew Francis Crowley. Did you know Francis Crowley as a member of the Communist Party?

Count Four: Were you ever a member of the Haldane Club of the Communist Party while at the University of Michigan?

Count Five: Were you a member while a student of the University of Michigan Council of Arts, Sciences, and Professions? (R. 1-3).

Pursuant to subpoena, petitioner appeared and testified before the Subcommittee on June 28, 1954 (R. 35, 218). For a four year period immediately prior to his appearance, petitioner had been employed as an instructor in psychology at Vassar College. After he received the subpoena to appear before the Committee his contract with Vassar College expired and was not renewed (R. 239, 236). For the period of 1947-1950, prior to his association with Vassar College, he had been at the University of Michigan in the Graduate School of Studies, studying for his doctorate in social psychology (R. 219). During most of the period of his stay at the University he was a teaching fellow in psychology (R. 239).

The transcript of the Committee session at which petitioner appeared was published by the Committee as part of its series of hearings entitled "Communist Methods of Infiltration (Education)" (R. 173). At the commencement of that series on February 25, 1953, the chairman indicated that the purpose of the investigation was to examine the Communist Party's influence on the thinking of teachers and through them on students (R. 79); and that the Committee aimed to identify teachers who were "sub-

ject to the directives and discipline of the Communist Party" (R. 79) in the hope that, as in the case of Communists in official positions in labor unions, they would be eliminated from positions in the teaching profession (R. 77). In its Annual Report for 1953, issued prior to the subpoena to petitioner, the Committee reiterated that it was investigating the influence of "the Communist teacher" on the minds of students, in particular through "extra-curricular associations . . . in . . . Marxist study groups" (R. 243).

Petitioner was subpoenaed to appear and testify on June 28, 1954, on the basis of the fact that he was named by one Crowley. Crowley had previously refused to testify and had been cited for contempt. Crowley, however, had now decided "to come before the committee and tell his entire story" (R. 174). Crowley was the first witness to testify the morning of June 28. Immediately before he testified, the Chairman of the Committee asked the Committee counsel to explain the purposes "for this hearing this morning" (R. 174).

In answer the Committee counsel stated:

> "The field covered will be in the main communism in education and the experiences and background in the party of Francis X. T. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York" (R. 175).[1]

Crowley then testified, among other things, that he knew petitioner when petitioner was a graduate student at the University of Michigan (R. 209). He further testified:

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[1] In its 1954 Annual Report, the Committee stated with respect to the session at which petitioner testified: "The 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" (R. 262).

"Mr. Kunzig (Committee counsel): And you knew him to be a member of the Haldane Club in the Communist Party?

Mr. Crowley: Yes, just the Haldane Club.

Mr. Kunzig: The Haldane Club of the Communist Party, I should say.

Mr. Crowley: Yes, to my knowledge he left that and he left the University of Michigan.

Mr. Kunzig: Do you know where he teaches at the present time, if he teaches?

Mr. Crowley: Yes, he is at Vassar. I would like to say, in fairness to him—

Mr. Kunzig: Any testimony you can give, we would be glad to have.

Mr. Crowley: Yes, that he expressed to me his opinion that he was pretty much of the same opinion that I was about membership in the party. I am convinced that he has left it, the Communist Party.

Mr. Kunzig: Your close knowledge of him was up to about 1950?

Mr. Crowley: Yes, I have seen him a few times since then, occasional visits" (R. 210).

In respect to the Haldane Club, Mr. Crowley testified that it was a group for graduate students and teaching fellows (R. 203). In answer to the question "What sort of activities did the Haldane group engage in," he said:

"They were chiefly of an intellectual nature discussing things. It was mainly a discussion group. There was very little of the activity of the kind that Neafus engaged in, that is, running around the campus with petitions or things like that. . . .

Mr. Velde: Did you study Marxism?

Mr. Crowley: Yes, pamphlets on Marxism. I forget:

which ones, but the discussion centered around, as I recall, literature and cultures, on the subjects of arts, the relation to communism of Marxism, what is the function of the artist in that respect.

The Haldane Club was chiefly an intellectual group, discussion group.

Mr. Velde: That was only, as you testified before, about 8 or 10 members of the postgraduate group at the University of Michigan?

Mr. Crowley: Yes.

Mr. Velde: Do you have any idea how many postgraduates were in the University of Michigan at that time?

Mr. Crowley: The student body was about 20,000 altogether, and I think there must have been about at least 15,000 (sic) in the college, so I guess the graduate students would be 12,000 to 15,000, I think.[2] . . .

Mr. Velde: Do you feel that your colleagues had that idea, that they were engaged in a conspiracy?

Mr. Crowley: I am sure that the ones I know did not have that notion. They were people who were mostly the intellectual type of people who were getting their feet wet on something or other. Some of them may have had that in their mind, but I never heard it expressed in terms of overthrowing anything. It was never expressed to me that way" (R. 204, 215-216).

Petitioner was actually called to testify shortly before 4 P. M. and was the last witness that day (R. 241, 36). The Subcommittee made no statement to petitioner as to the purpose of interrogating him (See R. 218-241).

Petitioner, in response to the questions upon which the indictment rests, attempted to present orally a written

[2] "15,000 in the college" apparently was a misprint for "5000."

statement of objections in explanation of his refusals to answer (R. 220-227, 235-238). His objections stated that he had no governmental employment (R. 227); he reasoned that it was therefore beyond the constitutional power of the Committee to investigate his political beliefs and associations; and he noted, quoting an opinion of this Court, that "'the citizen . . . has a right before answering to know why the inquiry is made; and if the purpose disclosed is not a legitimate one, he may not be compelled to answer'" (R. 229).

The Subcommittee refused to hear these objections and indicated that it was only concerned with whether he was asserting his privilege against self-incrimination (R. 227, 235-238, 240).

Proceedings Below

Petitioner's motion to dismiss the indictment for insufficiency was denied (R. 3-8). After trial by the Court defendant was adjudged guilty and sentenced to imprisonment for a period of six months and fined $250 (R. 67).

A panel of the Court of Appeals upheld the conviction in an opinion and order dated January 3, 1957. It held that even if one of the Committee's purposes in summoning petitioner was to expose his identity to the people of Michigan, its dominant purpose had been to acquire information relevant to "communist infiltration in the field of education" (R. 279-280). Such an investigation was, the Court held, within the Committee's authority. The Court further reasoned that this investigation might be justified, from the standpoint of a legislative purpose, by Congressional concern with educational stipends for veterans and governmental grants for research to colleges and universities (R. 282). Finally the Court reaffirmed a previous holding that Congress can inquire "'into threats to the existing

form of government by extra-constitutional processes of change. . . .'" (R. 284). For these reasons, the opinion concluded, the Committee could investigate "the Haldane Club of the Communist Party, to which appellant allegedly belonged" and "the identity of its members and the extent and nature of their participation," even if it were "principally a Marxist study group" and an "intellectual discussion group(s)" (R. 284).

A petition for certiorari was duly filed in the Supreme Court and on June 24, 1957, a *per curiam* order was entered, vacating the judgment of January 3 and remanding the case "for consideration in the light of *Watkins* v. *United States*, No. 261, October Term, 1956, decided June 17, 1957" (R. 290).

Upon remand the Court of Appeals, *en banc*, by a 5-4 court division entered its opinion and order of January 16, 1958, sustaining the conviction. It recognized that this Court had in *Watkins*[3] "in no uncertain terms criticized the resolution creating the Committee for lack of specificity, for uncertainty, for vagueness, and the scope of the construction accorded to the resolution as acted upon by the members of the Committee and its Subcommittees" (R. 293). It held, however, that this Court had not in *Watkins* intended to strike down the resolution.

Further considering *Watkins*, the Court of Appeals believed that this Court was there "of the opinion that the vagueness of the resolution made it necessary, and only fair, that the witness be apprised of the particular matter under inquiry by the Committee or Subcommittee holding the hearings, and, on objection, of the pertinency of the questions involved in the inquiry" (R. 295). The Court below concluded, however, that petitioner had not objected

[3] 354 U. S. 178.

to the questions on grounds of pertinence (R. 279, 302) and that in any event the subject of the investigation, "Communist Party activities within the field of education," and the pertinence thereto of the questions were clear to him (R. 302). The Court of Appeals also held that this Court's decision in *Sweezy* v. *New Hampshire*, 354 U. S. 234, did not compel it to rule that any of petitioner's constitutional rights were violated (R. 296).

Chief Judge Edgerton in a dissenting opinion joined by Judge Bazelon stated: "I understand *Watkins* to hold that the Committee on Un-American Activities had no authority to compel testimony because it had no definite assignment from Congress (R. 304). He then expressed the opinion that "'even if, contrary to my clear understanding of *Watkins*, Congress did 'with sufficient particularity' authorize the Committee to investigate something," its power to investigate "'un-American propaganda activities' need not and therefore should not be interpreted to authorize the Committee to select for investigation political activities and connections of university teachers" (R. 305-306). Circuit Judge Fahy in a separate dissenting opinion joined by Circuit Judge Washington stated: "Reading *Sweezy* in the light of *Rumely* and *Watkins*, I think the Committee could not proceed to investigate the field of education—at least with the use of compulsory process, under the sanction of contempt—without a more specific authorization than it had been given, and that therefore, the conviction must be reversed" (R. 306-307).

Summary of Argument

The opinions in the Court below, expressing different interpretations of this Court's decisions in *Watkins* and *Sweezy*, present two questions concerning the meaning to be found in the Committee's mandate from Congress. We

consider these two questions as the first two points in our Argument. The third point of our Argument: whether compulsion to answer the questions recited in the indictment violated the First Amendment—had been considered in the original opinion of the Court below and was not reconsidered on remand. As we shall indicate, however, we believe the *Watkins* and *Sweezy* opinions threw new light on this question, and it has been further illuminated by this Court's opinions since the reconsideration below. The fourth point of our Argument, relating to pertinence, was only considered by the majority in the Court below.

Some or all of these questions are involved in a number of cases pending in the Federal District Courts and Courts of Appeals, awaiting the decision of this case. The pending cases involve refusals to testify on grounds of the First Amendment in investigations in various fields before the instant House Committee or before the Internal Security Subcommittee of the Senate Judiciary Committee, which conducts investigations of a similar type to those of this Committee. In some of the proceedings the witness refused to answer all questions pertaining to belief, expression of opinion, and association for the purpose of such expression; in others, he answered all questions except those directed at the disclosure of the names of others with whom he had been associated for that purpose (as to the latter type of First Amendment case, see *infra* note pp. 40-41).

I.

On the basis of this Court's opinion in *Watkins*, it is clear that the language of the legislation purportedly granting investigative authority to the House Committee was not sufficiently definite and specific to constitute a delegation of power, and thus there is a complete lack of authority in the Committee to investigate by compulsory process. Peti-

tioner's summons was not therefore issued by authority of a Congressional committee within the meaning of the statute punishing contempt (2 U. S. C. § 192). Furthermore, because the uncertainty as to the Congressional intent means that the Committee has no operative authorization to conduct any investigation, any use by it of compulsory process is, under *Sweezy* as well as *Watkins*, a violation of due process.

Finally, the vagueness of the legislation is a particular vice because the purported authorization lies in the First Amendment field. The language of the resolution and statute pertaining to the Committee, both on its face and as interpreted over the years by the Committee, gives it virtually unlimited power to require witnesses to submit to public interrogation on matters of political belief and expression. The pervasive threat inherent in the Committee's free-wheeling power to compel testimony casts a restraint over free expression on all public issues and inhibits the expression of all non-conformist political thought. To guard essential freedoms from such a blanket repression, legislation delegating coercive investigative authority, like all other legislation in the First Amendment field, must be narrowly drafted, specific and definite. Use of compulsory process by the Committee, under this vague and sweeping legislation, therefore violates the First Amendment.

II.

An investigation of belief, expression, and association in the academic world concerns a field in which freedom from Government intrusion is of special importance under the First Amendment. It is possible to interpret the Committee's authority so as to avoid the Constitutional question presented by an investigation in this field, and by the instant investigation in particular. For, it is "propaganda"

which the legislation purportedly empowers the Committee to investigate, and this term is not generally understood to include the communication of ideas in colleges and universities.

III.

An investigation that imposes restraints on First Amendment rights is constitutional only if the restraints are justified by a compelling public need.

A. As to the first side of this equation—the restraints—here restraints on First Amendment rights were inevitable from the very purpose of the investigation. For the investigation as a whole, including as an integral part the summoning and interrogation of petitioner, was directed at the area of belief, expression of opinion, and association for the purpose of such expression—an area far removed from unlawful action or its incitement. Petitioner himself was subpoenaed to testify on the basis of information that he was a member of a group engaged in academic discussion of Marxist principles, particularly in relation to culture and art. At the outset of the investigation the Committee chairman had stated that the Committee's concern was with the Communist Party's influence on the thinking of teachers and through them on that of students; and the Committee report issued in the course of the investigation but prior to the summons to petitioner corroborated the fact that the focus of its investigation was belief, discussion, and peaceful political persuasion. The hearings demonstrate this dominant purpose throughout, as well as the Committee's great reach into the domain of belief and the inferable scope of its interrogation of petitioner if he had obeyed the command to answer.

The two phases of Communist activity to which the interrogation of witnesses was directed, were the purely

intellectual—that is, discussion in a study group of Marxist theories and public issues—and efforts at public persuasion on such issues, by oral or written expression either in other organizations or to the general public. But the Communist Party habitually takes positions which are not peculiarly or distinctively Communist on current public issues. The same conclusions on public affairs generally can be arrived at from non-Communist premises, and are often held by non-Communist but non-conformist thinkers. Thus, the investigation of the thinking of the witnesses on public issues and of their efforts to promote their views in other organizations, necessarily meant that the Committee examined and passed judgment on viewpoints on public issues held by non-Communists and debated in the community as a whole. The sharpness of the Committee's inquisition into the witnesses' political viewpoints seemed linked with its avowed purpose of judging whether those who admitted past Communist membership or sympathy were any longer under influence of Communist thought.

A related and salient point in the interrogations was the Committee command that witnesses name persons with whom they had associated for the discussion and expression of their views—a command apparently regarded as crucial in testing whether the witness was entirely cleared of Communist influence. Because the investigation was directed at the area of belief and opinion rather than the area of unlawful acts or their incitement, witnesses were placed in a unique ethical and legal situation: they were ordered to subject past friends and associates to a damaging exposure though neither the witness nor the Committee had any basis for believing that the persons whose names it demanded had ever been involved in unlawful activity or could contribute an iota of information about it.

In view of the factors we have outlined—the purpose of investigating the thinking of private citizens, the examination and evaluation of viewpoints in general currency on public issues, and the probe into lawful political association—the investigation imposed sweeping and severe restraints on First Amendment rights. As pointed out in *Watkins* and *Sweezy*, such an investigation coerces an adherence to orthodox and conformist views not only on the part of the witnesses, but the general public as well. Here the inhibiting effect would be especially felt in the academic community where freedom of thought and expression from government interference is extraordinarily important. Further, the Committee imposed a particular restraint on freedom of association; an inhibition on all non-conformist association resulted from the compelled public exposure of past associations for the expression of opinion and their appraisal by present standards. The Committee's insistence on the witness' subjecting past friends and associates to the same type of damaging Committee exposure he was himself undergoing, although there was no indication they had done anything other than express peaceful political opinion and participate in normal political activity, augmented the restraint on freedom of political association. This demand that the witness visit harm on his past associates, when the only purpose appeared to be to win his own exculpation rather than to serve any public need, also interfered with freedom of conscience, for the Committee thus used Government power to try to impose a standard as to right conduct that is contrary to widely and deeply held ethical belief.

These restraints and interferences flowed from the underlying condition that the basic purpose of the interrogation of petitioner and of the entire investigation was diametrically contrary to First Amendment principles. The Committee's articulate premise was that an influence upon the

thought of private citizens which may lead them to erroneous conclusions is the proper concern of Congress and is to be eliminated no matter how minor it may be in comparison to other influences. The Committee thus contradicts the underlying theories of the First Amendment that "It is not the function of our Government to keep the citizen from falling into error," and that "the best test of truth is the power of the thought to get itself accepted in the competition of the market." By attempting to degrade teachers in their standing and bar them from their profession on the basis of their alleged beliefs and associations, in order to impede their effective expression of their views and their access to an audience, the Committee also violated a corollary First Amendment principle: that the Government cannot interfere with speech on the basis of the character or associations of the speaker, but can only be concerned with whether specific utterances transcend Constitutional limits. The fact that the Committee must secure private cooperation in order actually to deprive teachers and others in opinion-expressing vocations, of their employment and their opportunities to reach an audience, does not relieve the Committee of responsibility for initiating their deprivation and for its interference with their right under the First Amendment to address any willing audience, regardless of their beliefs and associations.

B. It may be unnecessary in the case of the instant investigation to consider the second side of the constitutional equation: whether there was any legislative purpose that might have afforded justification for the restraints the investigation imposed on First Amendment rights. For, the validity of the investigation must be judged by its then purpose. Here the purpose—to investigate the thinking of private citizens and associations affecting it—placed the investigation squarely in the domain of belief. This is an

area to which the First Amendment gives absolute protection from Government intrusion and which by definition is far removed from action, the area of legitimate Congressional concern. There could therefore be no legislative justification for an investigation in this area.

Assuming *arguendo* however, that possible justifications for the instant invasion of rights should be considered, it is clear that the interrogation of petitioner had as its sole purpose "to expose for the sake of exposure," and that it therefore did not serve a permissible legislative purpose. Besides the Committee's statement to this effect with respect to the particular section of the investigation which included petitioner, the announced purpose at the inception of the entire investigation was to deal with "infiltration of education" by public exposure of members of the teaching profession who were connected with the Communist Party.

Again making an *arguendo* assumption—here, that the interrogation of petitioner should be viewed in the light of legislative purposes the Committee might have had in conducting the investigation—we shall consider the view of the court below that the investigation found ultimate justification in Congressional concern with efforts to overthrow the government by force and violence. The Committee's statements and the hearings themselves indicate that it at no time thought it likely or had reason to believe that the instant investigation into opinion and normal political activity would produce information as to such efforts or any incitement and advocacy of unlawful action; in particular there was no reason for such belief with respect to the interrogation of petitioner, who was summoned because of alleged membership in a group that discussed Marxist theory in relation to the arts. The beliefs and expression of opinion here under investigation were a number of "re-

moves" and extremely remote from expression so proximate to action that it is within legitimate Congressional concern under the Constitution. Even if such a tangential connection between an investigation and a legislative concern might ordinarily suffice, there must be compelling reason for an investigation which, like the instant one, seriously interferes with First Amendment rights. More must be shown to justify this investigation than the highly remote connection—which is the most respondent can show—between it and efforts to overthrow the government.

The Court below also suggested, as possible justifications for the investigation, Congressional concern with educational grants to veterans and with defense research grants to universities. The investigation was not, however, directed at either of these subjects, and it must be justified by its then purpose rather than retroactive rationalizations. Furthermore, the matter under investigation was extremely remote from any concern which Congress could constitutionally have with grants to veterans, and equally or even more remote from the problem of defense research grants. Such a remote and speculative connection with a matter of legislative concern cannot justify an investigation intruding on First Amendment rights.

IV.

The conclusion of the Court below that the Committee clarified for petitioner the subject of the hearing and the pertinence thereto of his interrogation, rests on the assumption that petitioner listened to the session at which he was interrogated from its opening. It seems doubtful that a Committee should be held to have discharged the duty of clarification required by *Watkins*, on the basis of such an assumption; but even if the Court was correct in this respect, it erred in its conclusion.

ARGUMENT

I.

The Committee's use of compulsory process was unauthorized, and also unconstitutional under the First and Fifth Amendments, because of the vagueness and breadth of Congress' purported grant of power to the Committee.

As stated in Chief Judge Edgerton's dissenting opinion in the Court below, this Court ruled in *Watkins* on the instant committee that the "'responsibility of the Congress . . . to insure that compulsory process is used only in furtherance of a legislative purpose . . . requires that the instructions to an investigating committee spell out that group's jurisdiction and purpose with sufficient particularity . . . No witness can be compelled to make disclosures on matters outside that area' (the area assigned the Committee by Congress) . . . Since Congress did not define that area, there can be no proof the Committee's questions were within it" (R. 304-305). Thus, this Court's finding in *Watkins* that the Committee's charter is highly indefinite and "excessively broad" (354 U. S. at pp. 202, 204, 205), dictates the conclusion that it did not constitute a delegation of power to investigate by compulsory process. Petitioner was not therefore summoned by authority of Congress or a Congressional committee within the meaning of the statute punishing contempt (2 U. S. C. 192), and his conviction falls for lack of authority and jurisdiction of the Committee to use compulsory process, even without the invocation of his constitutional rights.

Moreover, because of the vagueness of the Committee's mandate, it is also clear that the use of compulsory process and the contempt conviction based thereon violate petitioner's constitutional rights. Under due process of law

no one can be required to respond to governmental authority delegated in language as vague and meaningless as that of the House resolution and the statute. This conclusion follows from *Sweezy* as well as *Watkins*. The mandate to the Committee is so sweeping and indefinite, that there can be no certainty any subject of investigation is one on which Congress actually desires information. This situation is the equivalent of an absence of authority for any investigation. An infringement of privacy by a compulsion to make disclosures—even apart from the infringement here of First Amendment rights because the disclosures demanded by this Committee relate to belief and expression of opinion (see *infra*)—violates due process of law in the absence of Congressional authorization to the Committee to obtain the disclosures. *Sweezy*, 354 U. S. at pp. 253-255.

Violation of First Amendment

In addition, in *Watkins* this Court pointed out, as it often had before, the particular necessity for definiteness in a grant of authority when the authority lies in the field of First Amendment rights.[4] There is no question that the authorizing resolution and statute establish the Committee as an investigatory power in the First Amendment area. On its face, the dominant intent of the legislation is to authorize the investigation of peaceful expression of political opinion—the very type of expression which the Amendment is intended to protect above any other because of its essentiality to the democratic form of government.[5] For "propaganda" is merely a loose and opprobrious term for opinions expressed in an effort to persuade; "un-American"

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[4] *Watkins*, 354 U. S. at p. 198. See *Winters* v. *New York*, 333 U. S. 507, 509-510, 517; also *Burstyn* v. *Wilson*, 343 U. S. 495, 504; *Thornhill* v. *Alabama*, 310 U. S. 88, 97-99. Cf. *Speiser* v. *Randall*, 2 L ed 2d 1460, 1473, as to the particular necessity for procedural protection "when the transcendent value of speech is involved."

[5] See *Stromberg* v. *California*, 283 U. S. 359, 369; *Winters*, 333 U. S. at p. 518.

must refer to opinion that seems in some vague way undesirable; "subversive" is "flexible; it will mean one thing to one officer, another to someone else";[6] and propaganda that . . . attacks the principle of the form of government as guaranteed by our Constitution," certainly covers a broad area of political expression, rather than merely speech which advocates and incites unlawful action and may therefore fall outside the area protected by the First Amendment.[7]

Not only is the Committee thus authorized to investigate peaceful political expression, but it is empowered to and necessarily must, in the performance of its duties, define and classify political opinion in terms of whether it is "un-American," "subversive," or "attacks the principle etc." —that is, it must arrogate to the government the function of stamping political opinion as orthodox or heretical. The statute and resolution on their face thus authorize the grossest and most dangerous interference with First Amendment freedom. *Board of Education* v. *Barnette*, 319 U. S. 624, 640-642; *Terminiello* v. *Chicago*, 337 U. S. 1, 4-5.

Furthermore, as this Court pointed out in *Watkins*, the terms of the Committee's authorization must now be read in the light of their application over the years by the Commitee (354 U. S. at pp. 202-203). So read the authority embraces the investigation of every expression of opinion, whether oral or written, that coincides with the Communist view on any subject or that may reflect sympathy with the Communist Party or Soviet Russia, and any organization or individual engaging in such expression or in association

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[6] *Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123, 176 (Douglas, *J.* concurring). And see p. 194 (Reed, *J.* dissenting): "subversive" takes meaning from accompanying terms.

[7] See *Dennis* v. *United States*, 341 U. S. 494, 502, 515, 516; compare *Yates* v. *United States*, 354 U. S. 298, 318-321; see *Beauharnais* v. *Illinois*, 343 U. S. 250, 279 (Reed, *J.*, dissenting); *American Communications Ass'n.* v. *Douds*, 339 U. S. 382, 395.

with such organizations or individuals.[8] In practical terms, this means the power to investigate any group or individual espousing a non-conformist political view. There is, and has been no limitations in the Committee's investigations in terms of advocacy of unlawful action.[9] In short, the Committee has totally ignored the distinction between expression which must be allowed freedom under the First Amendment and that which may be restrained (See cases cited note 7).

Thus it is clear that the Committee's grant of authority, as written and as interpreted over the years, gives it virtually unlimited power to summon witnesses and compel public disclosure on matters of thought and expression. Like the ordinance recently considered in the *Staub* case, this power "makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official";[10] and like the ordinance the authorization is invalid on its face. Here as there the existence of the power casts an unconstitutional prior restraint on expression. For while this Committee's investigatory power exists, the only safety lies in abstention from political expression or in its near-equivalent from the standpoint of a free mind, unquestioning conformity.

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[8] See *Watkins*, 354 U. S. at note 40, pp. 202-203, and *Barsky* v. *United States*, as there cited; Gellhorn, *Report on a Report of the House Committee on Un-American Activities*, 60 (1946) Harv. Law. Rev. 1193.

[9] In the interim since the *Watkins* decision, the Committee has continued without abatement to exercise its sweeping power to investigate non-conformist expression it deems "un-American." During the past year it has stressed its view that efforts to obtain legislation to amend existing harsh immigration laws and to abolish the Committee are a threat to security and Communist-inspired. See Annual Report for 1957 of House Committee on Un-American Activities, 85th Cong. 2d Sess., House Report No. 1360, esp. p. 14; and pp. 13, 6-7, 9. As to the severity of the immigration laws, see *Rowoldt* v. *Perfetto*, 355 U. S. 115, 121.

[10] *Staub* v. *Baxley*, 355 U. S. 313, 322.

This is true because non-conforming opinion or association may invite, even long after the event, embarrassing exposure by the Committee in the "glare of publicity . . . , scorn and obloquy," loss of status and of position (*Watkins*, at p. 197, and *infra* p. 48 at note 39). As a result, the Committee exerts a restraint not only upon those called before it, but it also has a "subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and association."[11] Thus, through its power to force individuals to undergo a public political inquisition, the Committee coerces an acceptance of its standards of politically acceptable thought. As in the case of broad measures imposing more orthodox types of punishment or censorship of expression, the overall threat inherent in the Committee's power casts a restraint over the whole field of peaceful political expression and association. "It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion" and exerts a "continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview." *Thornhill* v. *Alabama*, 310 U. S. 88, 97-98. The Committee's vague and all-inclusive power in the First Amendment field "blankets with uncertainty" as to the consequences, and thus inhibits free expression on all social, economic, and political issues.[12]

In sum, to preserve the fullest possible protection for the essential freedoms of thought, expression, and association, legislation granting investigative power, like all other legislation affecting First Amendment rights, must be definite,

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[11] *Watkins*, at pp. 197-198. See also *Sweezy* at p. 248; *Barsky* v. *United States*, 167 F. 2d 241, 255 (C. A. D. C.) (dissent).

[12] *Thomas* v. *Collins*, 323 U. S. 516, 535; compare *Wieman* v. *Updegraff*, 344 U. S. 183, 190-191.

specific, and "narrowly drawn to meet the supposed evil." [13] Thus, under the First as well as the Fifth Amendment, the purported grant of authority to the Committee to conduct investigations by compulsory process is unconstitutional because of its breadth and vagueness.

II.

Congress did not authorize the Committee to conduct by compulsory process an investigation in the field of education.

We respectfully refer this Court to the two dissenting opinions in the Court below, in which four judges held that the Committee was not authorized to investigate in the field of education (R. 305-7).

The articulate purpose of the Committee in conducting this investigation in the field of education was to determine the influence of the Communist Party upon the thought of members of the teaching profession and their influence in turn upon the thinking of their students (*supra*, p. 5). In any event, whatever the precise formulation of committee purpose, an investigation by this opinion-investigating committee in the field of education would necessarily infringe on the expression and exchange of ideas in the academic world. Accordingly, the Committee's authority should, if possible, be construed to exclude this field of investigation. For, as the dissenting Chief Judge in the Court below pointed out:

> "Four Justices of the Supreme Court recently said: 'It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon

[13] *Cantwell* v. *Connecticut*, 310 U. S. 296, 307.

> such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas, particularly in the academic community. . . . [T]he areas of academic freedom and political expression' are 'areas in which government should be extremely reticent to tread.' Two other Justices said in the same case: 'These pages need not be burdened with proof, based on the testimony of a cloud of impressive witnesses, of the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university.' *Sweezy* v. *New Hampshire*, 354 U. S. 234, 245, 250, 262" (R. 305).

Considering that an investigation of education thus involves an area of particular significance under the First Amendment and one that is far removed from the legislative sphere allowable to the Federal government under the First Amendment (see *infra*, pp. 50, 52-56), it can hardly be assumed Congress intended the Committee to invade this field. "[W]e should not assume that Congress chose to disregard a constitutional danger zone so clearly marked." *Yates* v. *United States*, 354 U. S. 298, 319. Indeed, the Committee's authorization would be unconstitutional if construed to include the instant investigation (see *infra*, Point III). It is possible, however, to interpret the grant of power to the Committee to avoid this Constitutional problem. The authorizing resolution and statute speak of investigations of "propaganda"; the communication of thought and opinion at educational institutions is not propaganda as the term is generally understood and it need not be read here in other than its common meaning.

We do not mean to indicate there is any First Amendment restriction on summoning a teacher as a witness in a valid investigation. Of course, there is no special immunity for teachers. Our argument is that the investigation was

unauthorized because its subject was education—specifically, influences on thought and the individuals who might exert allegedly undesirable influence on thought at educational institutions. Our view is that it would be invalid to force any witness to testify in an investigation on this subject, whether or not the witness was himself a teacher.

III.

The Committee's authority as here applied, to force petitioner to answer the questions recited in the indictment, violates the First Amendment.

It is now established beyond argument "that an investigation is subject to the command that the Congress shall make no law abridging freedom of speech or press or assembly" (*Watkins*, 354 U. S. at p. 197); that the impact of a Congressional investigation as a restraint and coercion on First Amendment rights must therefore be judicially assayed; and that a committee interrogation is constitutional only if the restraint it imposes on First Amendment rights is justified in terms of its connection with a compelling legislative objective (*Watkins*, at pp. 198-199, 205-206; *Sweezy*, 354 U. S. at p. 251; and pp. 261, 265, Frankfurter, *J.*, concurring). This doctrine is supported by a wealth of precedent, establishing that a government command to the individual to give an accounting and submit to an inquisition is a substantial governmental interference with individual privacy, independence, and enjoyment of the freedoms guaranteed in the Constitution.[14] In its most recent opinion on

[14] See *Rumely* v. *United States*, 345 U. S. 41, 44, 48, affirming 197 F. 2d 166 (C. A. D. C.) (see especially 197 F. 2d at p. 174); *United States* v. *Harriss*, 347 U. S. 612, 625; *Schneider* v. *State*, 308 U. S. 147, 164; *Thomas* v. *Collins*, 323 U. S. 516; *Electric Bond and Share Co.* v. *Securities and Exchange Comm.*, 303 U. S. 419, 441. As to government subjection of an individual to public scorn and obloquy, see *Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123, 139, 159, 161, 186; cf. *Brown* v. *Board of Education*, 347 U. S. 483, 494.

this question, this Court said, addressing itself to freedom of association:

> "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute . . . (an) effective . . . restraint on freedom of association. . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *National Association for the Advancement of Colored People* v. *Alabama*, 2 L ed 2d 1488, 1499-1500.

Reviewing the justification there alleged for the compelled disclosure, the Court thereupon held that the State "had fallen short of showing a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists is likely to have" (2 L ed 2d, at p. 1502).

Accordingly, we shall first consider (section A) the restraints imposed on First Amendment rights by compulsory process to compel a response to the questions petitioner refused to answer, and then consider (section B) whether there was any justification for the interrogation in terms of a legislative objective.

A. Compulsion to Answer the Questions Recited in the Indictment Would Impose a Severe and Sweeping Restraint on First Amendment Rights

Petitioner was summoned and questioned by the Committee on the basis of its information that he had allegedly been a member of "The Haldane Club" of the Communist Party while a graduate student and teaching fellow at the University of Michigan in 1949-50. The Haldane Club, the Committee had been informed, was an "intellectual group,

discussion group" of 8 or 10 graduate students, out of some thousands of graduate students at the University.[15] According to the informing witness, Crowley, who had been an undergraduate student at the University at the time, "the discussion centered around, as I recall, literature and cultures, on the subjects of arts, the relation to communism of Marxism, what is the function of the artist in that respect. The Haldane Club was chiefly an intellectual group, discussion group . . . They were people who were mostly the intellectual type of people who were getting their feet wet on something or other" (*supra*, p. 8).

It is apparent from this testimony that the Committee, in summoning petitioner, was investigating belief and discussion, far removed from unlawful action or its incitement, instigation or preparation. The Committee's purpose and focus in the interrogation of petitioner—a primary determinant of its impact on First Amendment rights—is further illumined by the purpose and focus of the investigation in which he was called. For this reason, and also because the pattern of the investigation shows the likely reach of the interrogation of petitioner if he had obeyed the command to answer, as well as the effect of such an interrogation on First Amendment rights, we shall describe the larger context of the summons to petitioner: the investigation into "Communist Methods of Infiltration (Education)."

1. *Purpose, Focus, and Scope of the Committee's Investigation of "Communist Methods of Infiltration (Education)"*

a. Committee's Articulated Purpose and Focus

At the commencement in 1953 of the investigation in which petitioner was called, the Committee chairman (Mr. Velde) indicated that a particular concern of the Committee

[15] *Supra*, pp. 7-8.

was "the type of 'thought control' practiced by the Co
munist Party upon its members" and "the opportunit
that the Communist Party has to wield its influence up
members of the teaching profession and students throu
Communists who are members of the teaching professio
(R. 79).

In its Annual Report for 1953, published Feb. 6, 19
in the course of the investigation and before the interro
tion of petitioner in June 1954, the Committee emphasiz
and dilated on the point that its investigative focus was
influence of teachers in higher education upon the min
of students, particularly through extra-curricular assoc
tion in "Marxist study groups," though, as it stated "T
Communists in the teaching profession have been so f
. . . ." (R. 243). Quoting the testimony of its leading w
nesses, Davis and Boorstin, the Committee Report mak
crystal clear that the phase of the Communist Party wh
it was continuing to investigate was thought, discussi
and expression on social, political, and economic issu
rather than preparation, instigation, or incitement of
lawful activity. Thus, the Committee highlights Dav
testimony that he had joined the Communist Party becau
he had seen merit in the Marxist explanation of the e
nomic depression, and because he had been concerned w
the advance of Hitlerism in Europe, against which
Communist Party had been organizing a broad united fr
(R. 244). The Committee also stresses, as the fruit of
investigation, Davis' disclosure of his work in the Co
munist Party of attempting to persuade the Teache
Union to take the positions held by the Communist Pa
on "public questions" (R. 245); and, again demonstrati
its focus on the intellectual aspect of Communist Pa
membership, the Report quotes Davis' present day vi
that Communists should not teach in American universit

because he thought they were "'dishonest in what they say, whereas Aristotle and Plato were honest'" (R. 246).

Confirming the purpose and course of the investigation, the Committee reports the witness Boorstin's prior membership in a Marxist study group while a Rhodes Scholar at Oxford, and that the Communist Party's appeal to him rested on its stand against Nazism and on the inclusion in the Communist Party group at Harvard (consisting of 3 to 15 persons throughout the University, R. 83) of Granville Hicks and some friends who lent interest to the discussions of Marxism (R. 246-247).[16]

Thus, there is no mistaking the purpose and focus of the investigation. Not merely the opening statement of the Chairman of the Committee, but to an even greater extent its official report, demonstrates that the dominant purpose of the investigation was to probe matters of intellect and political belief rather than any unlawful acts. We shall now consider the hearings themselves; they further demonstrate this dominant purpose, and also show the great reach and range of the investigation into the domain of belief.[17]

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[16] Hicks, also mentioned in the Report as an important witness, corroborated Davis' testimony (R. 157). It is interesting to compare the Committee's discussion of Hicks' testimony (R. 248) with his actual testimony as to his first-hand experiences as a writer (R. 166-167).

[17] Excerpts from Parts 1 and 9 of the series of hearings in which petitioner testified, have been included in the record in the instant case (R. 75, 173). The entire hearings, that is, the Hearings of the House Un-American Activities Committee, 83rd Cong. 1st and 2nd Sess., entitled "Communist Methods of Infiltration (Education)" can of course be judicially noticed, and petitioner has filed a complete set of the hearings with the Clerk of this Court. They will be referred to herein as Hearings or abbreviated Hg.

b. Investigation into Political Belief, Persuasion, and Association

(1) *Group Discussion of Philosophy and Theory*

Davis' testimony, which the government states in its brief in opposition to certiorari (p. 6) is illustrative of the scope of the investigation, and which indeed laid down the general lines along which succeeding witnesses were questioned, established that there were two forms of Communist activity involved in the investigation. One was purely intellectual—it was typified by group discussion and debate on various Marxist theories or issues of the day (Davis: Hearings, 28, 32), the group generally consisting of 4 to 10 professors, professional staff members, or graduate students at the particular university. These discussion sessions, highlighted in the Committee Report as "Marxist study groups" (*supra*, p. 30), were described by all the witnesses who testified about them along the following lines:

> "There was no compulsion for the individual to attend or to have regular attendance because it was a group which discussed the Marxian philosophy and attempted to apply what they could from the discussion to the present day, that is, present day of that time . . . we read individual books. We would take chapters for example in Karl Marx' book or in Engels' work for example, and I remember clearly, since I was very much interested in it, the Dialectics of Nature. Each one would have a turn and he would lead the discussion within the group and there would be argument and debate . . . for example I remember clearly a great dissension within the group on the nature of the value of objects . . . we all were interested in it and we were drawn into it because of our interest, the Marxian philosophy. We believed in its application . . . We accepted the theoretical side, with argument and de-

bate . . . The Capital is very hard to understand. On the other hand, Dialectics of Nature I frankly and honestly enjoyed much more than I did the other . . . I had read the Communist Manifesto before then. We did not study that because I don't think we were basically interested in that. That was sort of, as you know, like an order or direction. This was an intellectual group which liked to argue and discuss . . . For example, during the early part of the war when the Soviet Union called the war a war of national liberation . . . we studied books on the problem of national liberation. We read up on it as to what they meant by national liberation. At other times . . . we studied very carefully the genetics controversy. . . . " (Dr. Marcus Singer, now Professor of Zoology at Cornell University, as to the Harvard group when he taught there: Hearings, 1539-41).

See also Hg. 52-54, 1029-1031, 1047-1054, 1922, 1924-1926.

(2) *Opinion, and Efforts to Persuade the Public, on Controversial Public Issues*

Besides the purely intellectual and philosophical aspect, the other aspect of Communist Party activity under investigation was political opinion and persuasion on current public issues. The Communist Party members tried to persuade their colleagues (Hg. 14, 16),[18] organizations (Hg. 20-25, 54-55), or the public at large (Hg. 26-27) to adopt and support their views on public issues, sometimes through writing pamphlets or articles, such as Davis' on anti-

[18] Generally, the professors not only made no attempt to influence the students politically in class, but also had no political contact with them outside of class, except to the extent that professors might address public meetings attended by students. Student and faculty discussion groups were generally entirely separate (Hg. 14, 16, 1023, 1868, 1925).

Semitism and Nazism (Hg. 33-34); they also contributed and tried to get contributions to the current public causes in which they were interested (Hg. 35, 1559, 1920).

In investigating the political opinion and persuasion phase of the Communist Party, the Committee's interrogation of witnesses was necessarily directed at exposing and evaluating viewpoints in general public currency on the social, economic, and political issues in debate in the community as a whole. For, it is a matter of common knowledge, and amply evidenced by the Committee report and the testimony of the leading witnesses (*supra*, pp. 30-31), that the Communist Party habitually takes positions which are not peculiarly or distinctively Communist on current public questions.[19] The same conclusions on public affairs generally can be arrived at from non-Communist premises, and are often held by non-Communist "liberals." Thus, in examining the thinking, expression, and efforts at persuasion of Communists or alleged Communists on public issues, the Committee necessarily examined and passed judgment—always implicitly and sometimes explicitly—on viewpoints held by non-Communists as well as Communists. Here the Committee was not dealing with Marxist theory or any parochial, abstract, or philosophical issue, but was instead involved in and endorsing viewpoints on everyday political issues. These controversial public issues were a salient phase of the investigation into both the thinking of the witnesses and their efforts to promote their views in other organizations.

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[19] Davis and other witnesses indicated that they joined the Communist Party though its position was not distinctive on the issues of concern to them—unemployment, discrimination, anti-Fascism, peace—because they felt that it was working militantly, particularly through its members' efforts to educate other organizations, to mobilize mass public opinion on these issues (See Hg. 5, 9-10, 57, 1029, 1047, 1544, 1846-1847, 1918).

Thus, Davis testified that he and the half-dozen or so other Communists on the Harvard staff in the 1930's (Hg. 6) were attempting to promote "policies desired by the Communist Party" in the Teachers' Union (Hg. 9). This testimony was stressed by the respondent in its brief in opposition to certiorari (pp. 6-7), but respondent neglected to mention what these policies concerned. Davis testified that the policies and resolutions the Communists would have tried to persuade the Teachers' Union to adopt "would have had to do again with the national political situation at that time. The Communists supported the New Deal, supported the Roosevelt administration until the Russian pact of 1939; . . . measures . . . against anti-Semitism; against fascism; for minority rights" (Hg. 11).

Accordingly, because the Committee was investigating the field of opinion and persuasion on public issues, it asked witnesses to explain and defend their views and public expressions on such controversial issues as the Spanish embargo (Hg. 74); the deportation of Harry Bridges (Hg. 74); the sentence imposed on Earl Browder and the appeals for clemency for him (Hg. 79-81, 1078-9); opposition to the immigration law co-authored by one of the Committee members (Hg. 85); the cause of the Korean War (Hg. 93, 5781); support of "liberal" legislation (Hg. 1030); opposition to the Committee (Hg. 1088, 1097); and the desirability of allowing Communists to teach (Hg. 1055, 1087-1088, 1138, 1557-8, 1580).

Sharp inquisition into the viewpoints of witnesses on such public issues was necessary in view of the Committee's aim of determining whether those who admitted past Communist membership or sympathy were any longer under the intellectual influence of the Communist Party. An important function assumed by the Committee in this investi-

gation was to determine whether the witness had been redeemed intellectually and should be considered "cleared" of Communist influence on his views.[20] In line with this purpose, interrogation was directed at whether the witness, confessing past mistakes, had adopted views acceptable to the Committee on past political issues as well as on more recent events.[21] Witnesses were asked to agree that anti-Semitism was worse in Russia that it had ever been in Nazi Germany (Hg. 12, 58, 89, 1101, 1015); that the Communist Party in the United States is a conspiracy (Hg. 1561); that Supreme Court decisions on the Communist Party are factually correct (Hg. 5781); and that the Committee's work is desirable (Hg. 15, 42, 61, 92, 1032-1033). Thus, when a witness stated that the Committee investigation "in spite of all fairness and good will . . . is not the way to get a clear picture of the extent of the Communist movement in the United States," the Committee Chairman said he was inclined to agree with the condemnation by another Committee member that "you haven't entirely disassociated yourself from the Communist ideology" (Hg. 5835-5836).

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[20] At the outset of the investigation the Committee indicated that its concern extended further than actual Party membership, to teachers "who are subject to the directives and discipline of the Communist Party" (R. 79), and also its interest in clearing those individuals "whose testimony admitting former Communist Party membership has that character of trustworthiness which convinces one that he has completely and finally terminated his Communist Party membership, and has been given in all good faith" (R. 78-79). As to the clearance function, see Hearings, 241-2, 251, 262, 998, 1129, 1135-6, 5803.

[21] Witnesses were particularly pressed to account for themselves if they had had the view prior to Russian entrance into World War II that the Nazi-Soviet Pact was only a temporary measure and that Russia was preparing to fight Germany (Hg. 1548, 1560; 1019-1020; 1047).

Witnesses were asked to prove themselves by writings, speeches, viewpoints, and organizational activity that would show their intellectual redemption. Witness Davis offered for this purpose his book review of a book on "Soviet Psychiatry" (Hg. 38); witness Boorstin emphasized, in answer to "how you have expressed your opposition" to the Party, his participation in religious activities (Hg. 51). (See also Hg. 111-112.)[22]

(3) *Compulsion to Name Others*

A crucial phase of this investigation into discussion and expression of lawful political opinion was the interrogation of the witness about his associates in such discussion and expression. The witness' willingness to give their names seems to have been considered a test of his intellectual redemption from Communist influence.[23]

To understand the dilemma of the witnesses it must be realized that they were in an unique situation, resulting from the Committee's assertion of the power to compel testimony in the area of belief and opinion, rather than in

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[22] A sidelight was thrown on the question of clearance by the problem of Felix Browder, son of Earl Browder, one-time leader of the American Communist Party. After one professor from Massachusetts Institute of Technology had been asked why Earl Browder's son had been awarded scholarships at MIT and he had been unable to give much information (Hg. 1027), a more articulate witness from the MIT faculty volunteered that Felix Browder was considered the most brilliant mathematics student in MIT's history; and though he was entirely disinterested in politics he had had great difficulty because of his name (Hg. 1090-1094). In answer to the Chairman's suggestion that the Committee would be glad to receive young Browder's proof of his anti-Communist work, the witness replied that this would be unavailable because he works only in the field of mathematics (Hg. 1092).

[23] See especially Hg. 5836, 5780. Compare articulation of this view by Senator McCarran, Chairman of Senate Subcommittee conducting similar investigations to the instant one: Brown, *Loyalty and Security* (1958), p. 411.

the area of unlawful acts or their incitement. For the witness was directed to expose past associates and friends though neither he nor the Committee had any indication they had ever been involved in unlawful or dangerous conduct. The Committee at no time indicated, either when there were refusals to answer or otherwise, that it had any factual basis, with respect to the individuals it was attempting to expose, for believing they had ever participated in unlawful activity or could contribute one iota of information on it. Thus, from the customary American standpoint that mere expression of peaceful political opinions is immune from Government intrusion and that a citizen's duty to inform on his fellow-citizens relates only to illegal or dangerous conduct, there was no apparent advantage to the public in the witness' injuring his past associates by damaging exposures of them. The only apparent purpose in his harming past associates—associates whom he had regarded as fellow-idealists—was to test his "cooperation" with the Committee and his own intellectual redemption.

This was the sticking-point, the final test—give names.[24] There was no escape, no matter how arduously the witness attempted to demonstrate, without refutation by the Committee, that the demanded exposure would be pointless. Thus, a witness who had testified fully about his own participation in discussion and political persuasion in the Communist Party group at Harvard, though he had not in fact been a Communist Party member (Hg. 1540), explained his resistance to re-exposing the 9 or 10 persons who had been in that group:

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[24] For this test, the Committee asked witnesses over and over about their knowledge of the same half-dozen or so persons who had already been named as members of the group to which the witness belonged. See Hearings, 7-8, 35-37, 103-104, 1016-1018, 1077, 1548-52, 1566-1570.

"I am prepared to talk about myself, but I honestly feel that in honor and conscience I cannot, I prefer not, I should not talk about my colleagues and associates. I know that you have had before you a number of people and they have spoken freely and I have thought very carefully about this because it is a most difficult position. . . . I feel strongly and knowing these people that they were like myself, they did nothing subversive. . . . (Hearing of May 26, 1953, pp. 1544-5).

"I am prepared to speak fully about myself, as I did yesterday, and tell you everything about myself, waiving my right to my own opinions, past or present, in honesty and sincerely; but I could never, sir, in honor and conscience, trade someone's career for my own, come what may . . . I will state emphatically if ever I encounter subversion among anyone, irrespective of whether they are my colleagues, I will gladly report it. It's my duty, I feel, to report it, but we were not subversive, sir. We didn't follow any slavist policy. We were intellectuals. We were scholars. We were pursuing a right, as we thought it . . . I have tried to project myself back into a world which was different than it is now. I have completely disassociated myself from those activities, and I have expressed that. I have no interest in those activities at all, but as I look back on them I give you my honest evaluation . . . I just feel I could not possibly work in my laboratory again. It's not that I'm hiding something. . . . It's a basic feeling . . . I checked up in the interim on my feeling, basic feeling, sir, about the questions you asked me: and that's what I think I devoted most of my time. The rest of the time I tried to rest . . . My conscience demands that anyone I know of who is subversive or has been subversive should be reported . . . But this was not subversion. I participated in this sir. I analyzed

it. It just wasn't. It wasn't a conspiracy." Hearing of May 27, pp. 1552-3, 1556, 1561. And see Hg. 1562.[25]

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[25] For indications by the Committee that it had no basis for believing the persons whose names it demanded had engaged in unlawful activity, see especially Hearings, 1553-1556. Compare Hg. 1579; 3571-2.

Other witnesses who refused to give names also made it clear that they would not have been reluctant to name anyone of whom there was reason to suspect involvement in unlawful activity (e.g., Hg 991, 4016-4017).

The witness quoted in the text was cited and convicted for contempt for his refusal to re-name the Harvard group. The conviction was finally reversed on the basis of this Court's *Watkins* decision. *Singer* v. *United States*, 247 F. 2d 535 (C. A. D. C.), vacating 244 F. 2d 349 and reversing 139 Fed. Supp. 847. Professor Arguimbau, who also testified about his own conduct but refused to give names (Hg. 4013-4036), was also convicted of contempt (Brown, *Loyalty and Security* (1958) p. 127 note 11); and a contempt indictment against Bernhard Deutch, who took the same position (Hg. 4043-4051), apparently is still pending (See 235 F. 2d 853, C. A. D. C.) The only way that appeared open to a witness to avoid naming names and at the same time avoid contempt proceedings for a refusal to answer, was to refuse to answer questions about his own involvement, on grounds of the Fifth Amendment privilege against self-incrimination; that is, it was thought that once the witness testified about himself, he had no legal protection against naming others. See Pollitt, *Pleading the Fifth Amendment*, 32 (1956) Notre Dame Lawyer 43. In this dilemma, witnesses refused to give testimony about themselves they might otherwise have been willing to give. (See Hearings, 1037, 1517, 4039-4040, 5757-5759, 5779-5780.) Invocation of the Fifth Amendment, however, resulted in suspicion and threatened or actual loss of employment. (Hg. 1582; see New York Times of July 2 and 3, 1954 as to discharge of witness Polumbaum, and Hg. 997; Brown, *Loyalty and Security* (1958) 127.)

Several of the contempt cases now pending in the lower Federal courts in which the witness refused to answer questions on grounds of the First Amendment, actually are based on a refusal to name others. For example in *United States* v. *Whitman*, D. D. C., Crim. No. 1213-56, Whitman, a copy reader on the *New York Times*, was called to testify, along with a number of *Times* employees, by the Internal Security subcommittee of the Senate Judiciary Committee in its investigation of newspapermen. He asserted that he had only been involved in lawful expression of opinion and that the whole interrogation violated the First Amendment. Nevertheless he would voluntarily answer all questions

Again it is to be emphasized that this type of probing into associations occurred solely because of the Committee's area of investigation: political belief and lawful expression of political opinion.

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The interrogation of the group of witnesses named by the witness Crowley, which included petitioner, dealt, like the rest of the investigation, wholly with political belief, discussion, and lawful persuasion. However, it diverged slightly from the predominating pattern because Crowley had been an undergraduate student when he had been a member of the Communist Party (Hg. 5761-5762). At the University of Michigan, where he knew petitioner, he first belonged to an undergraduate Communist group of 10 or 15 students (Hg. 5773-5774)—out of a total undergraduate enrollment of some thousands.[26] The activities of this group were to arrange meetings open to the whole student body for the discussion of current events (Hg. 5764); to write letters to the student newspaper on current issues (Hg. 5770); to circulate petitions on the campus (Hg. 5774).[27] The Haldane Club, which Crowley then joined and in which he allegedly knew petitioner, was not primarily for under-

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except those which would cause him to expose and injure past associates, whose activity he believed was like his own and whom he therefore had no reason to suspect of any involvement in illegality. He thereupon answered all questions except for naming others. The District Court has reserved decision in his case, pending this Court's determination of the instant case.

[26] *Supra*, p. 8.

[27] A minor number of witnesses besides Crowley and the Crowley-named witnesses were interrogated about such student, rather than professorial groups. See Hg. 225, 236, 989, 1001-1002, 1041, 1846-1859, 4044-4050. The interrogation of Crowley and his group, like that of the professorial group, also included questioning about off-campus activity in the field of political persuasion, such as electioneering for third-party candidates (Hg. 5757, 5760), and opposition to proposed legislation (5794).

graduates, and it concentrated on theoretical discussion rather than political persuasion (*supra*, pp. 7-8).

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In sum, the articulated purpose of the investigation was to examine into the intellectual influence of Communist Party members in colleges and universities, and the interrogations were directed at thought and the exchange and expression of opinion, either on abstract questions of political philosophy and economics or on the current issues of the day. The investigation was not directed at incitement or instigation of unlawful action to change our form of government nor did the information on which witnesses were summoned nor their interrogation involve this issue. Indeed, even as philosophical abstractions, force and violence were not a focus of thought or discussion in the groups to which the witnesses belonged (Hg. 58, 1025, 1051, 1059, 1543-1544, 3573-4, 4029-30, 4045, 4050, 5819).

2. *Effect of the Investigation on First Amendment Freedoms*

It is almost an anti-climax to analyze how the summoning and interrogation of petitioner and the investigation of which it was a part restrained First Amendment freedoms. He who runs through any part of this hearing can read on every page the contradiction of First Amendment principles.

a. Inhibition of All Non-Conformist Expression

Perhaps the most drastic restraint imposed on First Amendment freedoms by this investigation into peaceful political expression and association,[28] is indicated in this

[28] It may be noted that the same restraints ensue from any Congressional investigation in this area; they are not unique to investigations conducted by this Committee. See Dembitz, *Congressional Investigations of Newspapermen, Authors, and Others in the Opinion Field*, 40 (1956) Minnesota Law Review 517.

Court's *Watkins* opinion. Not only is compulsion exerted upon the witness to keep himself free from suspicion by adherence to the Committee's standards of acceptable opinions and associations, but "there is the more subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time"—that is, the fate of accounting for unpopular views "in the glare of publicity . . . subject to public stigma, scorn and obloquy." 354 U. S., at pp. 197-198. See also *Sweezy*, 354 U. S., at page 248, as to such an investigation's "inhibiting effect in the flow of democratic expression and controversy upon those directly affected and those touched more subtly." The fact that one can easily be mistakenly accused, when accusation depends on someone else's estimate of his political convictions, heightens the intimidating effect of such an investigation on the expression of political views (Compare identification of a mathematics professor as a Communist Party member, Hg. 1572, with modification of this testimony, Hg. 1584).[29] This danger is compounded by the circumstances that "Proving after so long a time that one did not have certain beliefs is a most difficult thing to do" (Hg. 1582).

It hardly needs saying that the expression restrained by the Committee—the expression of political dissent—is the most essential aspect of First Amendment freedom. *Stromberg* v. *California*, 283 U. S. 359, 369; *Sweezy*, at pp. 250-251. And, as this Court has asserted, abstract discussion of any doctrine, including "Marxism-Leninism," must be protected. (*Dennis* v. *United States*, 341 U. S. 494, 501-2); one cannot seek knowledge if the mind can go only so far, and no farther. "Advocacy which is in no way brigaded with action should always be protected by the First Amend-

[29] As to the difficulty of disproving a false accusation, see Dembitz, op. cit. *supra*, 40 Minn. Law Rev. at pp. 531-532.

ment. That protection should extend even to the ideas we despise." *Speiser* v. *Randall*, 2 L ed 2d 1460, 1479 (concurrence). Here, however, change in our form of government, even as an abstract doctrine, was involved only to the slightest degree in the investigation. In the process of political interrogation, exposure, and evaluation, the Committee implicitly, if not explicitly, put a Government stamp of disapproval on all non-conformist thought and expression; it was this expression—quantitatively and qualitatively of much greater significance in this country than discussions of the philosophy of revolution—on which the Committee's work had its major restraining effect.

Perhaps of even greater importance under the First Amendment than the right of the general public to non-conformist political expression, is protection of freedom of thought and discussion by and among the faculty members of our universities—those whose vocation it is to think freely and boldly. "If we would guide by the light of reason, we must let our minds be bold." *New State Ice Company* v. *Leibmann*, 285 U. S. 262, 311, Brandeis, J. dissenting. Here the Committee took thought and expression in the academic world under governmental surveillance. "The essentiality of freedom in the community of American universities is almost self-evident." *Sweezy*, 354 U. S. at p. 250.

b. Interference with Freedom of Association and Conscience

Particular attention must be paid to the restraint imposed on freedom of association—that necessary adjunct to freedom of expression. Here the Committee hammered hard. In that the Committee forced disclosure, for the most part, of past association for the expression of political opinion, in a sense an even greater restraint was cast on freedom of association than by enforced disclosure of present group membership (Compare *National Association*

for Advancement of Colored People v. *Alabama*, 2 L ed 2d 1488, 1500). By compelling that associations be "disclosed and judged by current standards rather than those contemporary with the matters exposed" (*Watkins*, at p. 197), the Committee promotes fear of all association for the expression of non-conformist views, for any may at some time in the future appear suspicious. Such an investigation is "bound to operate as a real deterrent to people contemplating even innocent associations." See *Garner* v. *Los Angeles Board*, 341 U. S. 716, 727-8, Frankfurter, J. concurring in part. See also *Wieman* v. *Updegraff*, 344 U. S. 183, 191. The Committee undermines the self-confidence and mutual confidence without which men cannot associate to exchange and express political views. It deters association not only because of fear of being exposed and judged in the indefinite future, but also, we suggest, because of reluctance to undergo the moral dilemma of compulsion to participate in such an exposure of others.

Besides interfering with freedom of association, we submit that the Committee's insistence on the naming of names, without any indication that the persons to be named had engaged in illegality, also interfered with the freedom of thought protected by the First Amendment. Through this insistence, backed by the contempt power, the Committee tried to coerce acceptance of a new standard of right conduct—that one should win one's own exculpation and salvation by shifting suspicion and stigma to his fellows, though neither he nor the interrogating official has reason to think they have done wrong. The Committee thus tended to impose a standard, through the power of government, contrary to widely and deeply held ethical belief; it was thus intruding in the domain of conscience, which "it is the purpose of the First Amendment to our Constitution to reserve from all official control."[30]

[30] *Board of Education* v. *Barnette*, 319 U. S. 624, 642.

c. Conflict between the Committee's Basic Purpose and the First Amendment

How the Committee came to perform the non-governmental function of imposing standards of acceptable belief and expression, can be understood when it is realized that the basic purpose and premise of the interrogation of petitioner and of the entire investigation were directly contrary to First Amendment principles. For, the Committee's articulate premise was that an influence upon the thinking of private citizens which is regarded as undesirable is the proper concern of Congress and should be eliminated through the work of the Committee (*supra*, pp. 5-6 and R. 7[illegible]—indeed, it should be eliminated no matter how minimal it may be in comparison with other influences. Thus, in the course of the investigation the Committee recognized that it was only an infinitesmal percentage of teachers who even might have, because of Communist connection, tried to influence student thought in an undesirable manner (R. 243; Hg. 1143). It applied to the field of ideas, however, the adage more applicable to horticulture that "one rotten apple spoils the barrel" (Hg. 1060, 1934).

Thus the Committee demonstrated no conception of the First Amendment fundamental: "It is not the function of our Government to keep the citizen from falling into error."[31] The Committee's purpose and work were diametrically opposed to "the theory of our Constitution . . . that the best test of truth is the power of the thought to get itself accepted in the competition of the market"[32] and "the traditional right of Americans to discuss and evaluate ideas without fear of governmental sanction."[33] Rather

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[31] *American Communications Association* v. *Douds*, 339 U. S. 382, 442 (Jackson, J., concurring in part).

[32] *Abrams* v. *United States*, 250 U. S. 616, 630 (Holmes, J., dissenting).

[33] *Dennis* v. *United States*, 341 U. S. 494, 502.

than confidence in the distillation of truth from diversity of viewpoint, the Committee assumes exposure to error is so likely to preclude the discovery of truth that it should not be permitted; not diversity but conformity is the precept of the investigation. The Committee will not risk the "competition of the market" in the field of ideas without government manipulation of it.

d. Interference with Right to Participate in Medium of Expression

A fundamental corollary of these First Amendment postulates, likewise ignored by the Committee, is this: the Government cannot interfere with speech on the basis of the character or associations of the speaker but can only be concerned with whether "utterances transcend the bounds of the freedom of speech which the Constitution protects."[34] Except for such utterances, Government cannot interfere with a speaker's First Amendment right to "reach the minds of willing listeners."[35] The Committee squarely violated this principle when it attempted to degrade teachers and eliminate them from their profession on the basis of their alleged beliefs and associations, in order to curtail their opportunities to express their views. "[T]he power of reason as applied through public discussion"[36] cannot prevail under the Committee's revision of the First Amendment—if the government suppresses speech on the basis of who

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[34] See *De Jonge* v. *Oregon*, 299 U. S. 353, 365: "The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects." The same: *Herndon* v. *Lowry*, 301 U. S. 242, 258-259.

[35] See *Kovacs* v. *Cooper*, 336 U. S. 79, 87 (opinion of Reed, J.).

[36] *Whitney* v. *California*, 274 U. S. 357, 375 (Brandeis, J., concurring).

is speaking, labels speakers as acceptable or unacceptable, and establishes that ideas are to be prejudged on the basis of who enunciates them.

Besides destroying the free debate of ideas, the Committee cast a direct restraint on the First Amendment right of the affected individuals to participate in opinion-expressing vocations and media—a right with which government can interfere only insofar as their "utterances transcend" constitutional limits. Here the effort was to purge the ranks of University professors; in other investigations it has been the press and the church.[37] The danger of a humiliating experience and a damaging exposure at the hands of the Committee, inhibits individuals who are vulnerable to attack from participation in a medium likely to come under Committee surveillance.[38] Moreover, even if the teachers, writers, and other individuals are themselves willing to take this risk, the Committee's exposures, with its embarrassment of the employer and the employing institution as well as the individuals themselves, may mean and in fact has often meant that they are unable to retain or secure employment in their chosen vocation or medium.[39] "That

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[37] Dembitz, op. cit. *supra*, 40 Minn. Law Rev. at pp. 517-518, 552.

[38] That is, the restraint is comparable to that in *Rumely* v. *United States*, 197 F. 2d 166, 174 (C. A. D. C.), aff'd 345 U. S. 41. There an investigating committee's exposure of the names of purchasers of an organization's literature was held to restrain individuals from participating in the organization's affairs as purchasers; here the threat of exposure leveled at teachers and others in opinion-disseminating positions restrains participation in media of expression.

[39] See *supra* note 25, as to discharge of witness Polumbaum; Brown, *Loyalty and Security* (1958) p. 127 and ff., esp. p. 129; consider *supra* p. 5, as to termination of petitioner's employment at Vassar College; see New York Times for Jan. 6, 1956, respecting discharge by New York Daily News of a reporter who refused on First Amendment Grounds to answer questions in the Senate Internal Security Subcommittee's investigation of the press; see

this impact is partly the result of non-governmental activity by private persons cannot relieve the investigators of their responsibility for initiating the reaction." *Watkins*, 354 U.S. at p. 198. The same: *National Association for the Advancement of Colored People*, 2 L ed 2d at 1500.[40]

The question here is not whether persons holding certain standards of scholarship or expressing certain viewpoints should or should not, in the opinion of educators or university authorities acting independently of the government hold faculty positions, or should or should not, in the opinion of private citizens acting on the basis of their own thinking and initiative, gather an audience. The question is what is the function of *Government*, under the Constitution, in relation to belief and expression, and whether an agency of government can interfere with opportunities for expression and the free exchange of opinion among private citizens on the basis of its view of their beliefs and associations. The government's interference with opportunities for expression was particularly noxious in the instant case because the Committee investigation bore directly on the academic world, where "the essentiality of freedom . . . is almost self-evident."[41]

Brief of American Association of University Professors, *amicus* in instant case, pp. 16-18.

The hearing of the appeal from the newspaper reporter's conviction for contempt has been deferred until after this Court's decision of the instant case (*Price* v. *United States*, No. 13,925, C. A. D. C.).

[40] See also in support of this principle, *Railway Employees' Dept.* v. *Hanson*, 351 U. S. 225, 232; *Anti-Fascist Committee* v. *McGrath*, 341 U. S. 123, 141; *Public Utilities Commission* v. *Pollak*, 343 U. S. 451, 462.

[41] *Sweezy*, 354 U. S. at p. 250. And see *Sweezy* at p. 262 (Frankfurter, *J.*, concurring): "'[T]he exclusion of governmental intervention in the intellectual life of a university' is essential to a free society.

(*Continued on next page*)

B. The Committee's Interference with First Amendment Rights Was Not Justified by a Legislative Purpose

1. *Impossibility of Justifying Investigation in Area of Belief*

Before taking up the question of purposes which might have afforded justification for the investigation, we suggest that it may be unnecessary to reach that problem in this case; that is, here the unconstitutionality of the investigation is clear without considering the doctrine that the invasion of First Amendment rights must be weighed against the justification therefor. For, the witness at the time, and the Court thereafter, can only determine the validity of the interrogation and the witness' duty to answer in the light of its then purpose, rather than some "retroactive rationalization."[42] Here the Committee's announced and reiterated purpose was to investigate matters of thought and belief, and association affecting them, of private citizens. We believe this purpose, without more, establishes the invalidity of the investigation. By definition, influences on thought are so far removed from action with which the Government can legitimately be concerned, that there could be no justification for an investigation in this area. "[T]he domains of con-

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The problem here is of course an entirely different one from that before the Court in *Beilan* v. *Board of Public Education*, 2 L ed 2d 1414. There under consideration was the function of a municipal board of education, which necessarily enters affirmatively into the educational process because it establishes and operates the public schools; the question was whether, as a municipal employer, it had accorded due process in determining the fitness of a teacher.

[42] *Watkins*, 354 U. S. at p. 204. See also pp. 206, 208-209, 214-215. And see *United States* v. *Icardi*, 140 F. Supp. 383, 388 (D., D. C.): "The Court does hold that if the committee is not pursuing a *bona fide* legislative purpose when it secures the testimony of any witness, it is not acting as a 'competent tribunal', even though that very testimony be relevant to a matter which could be the subject of a valid legislative investigation."

science and belief have been set aside and protected from government intrusion."[43]

2. *Committee's Sole Purpose to Expose*

In the event it is nonetheless deemed necessary to consider possible justifications for the instant invasion of rights, we believe it clear that the entire investigation, or at the very least the interrogation of petitioner and the section of the investigation of which it was a part, had as its sole purpose "to expose for the sake of exposure," and that it therefore did not serve a permissible legislative purpose. *Watkins*, at p. 200.

The Committee stated in its 1954 Annual Report that the sessions at which petitioner was called "were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" (R. 262). Judging from this statement, the Committee had not regarded the interrogation of petitioner as connected, even remotely, with the purported subject of "infiltration of education," but had instead regarded it as part of a more general exposure effort. But assuming the Committee summoned petitioner because of his connection with education, the announced purpose at the inception of the education hearings was to deal with "infiltration of education" by exposing members of the teaching profession who were connected with the Communist Party, in the hope that they would be eliminated from the profession (R. 77; compare R. 265-266).

Thus the Committee's purpose in summoning petitioner was either an exposure of individuals at random, or of

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[43] *Speiser* v. *Randall*, 2 L ed 2d 1460, 1479 (concurrence); also *Board of Education* v. *Barnette*, *supra* note 30.

individuals in teaching. Its actual procedure in the session in which petitioner was called indicates the former. The basis for the session was the circumstance that one Crowley, who had previously refused to testify, was now ready to testify as to his own past Communist membership and to name those with whom he had associated (Hg. 5753-4). Following Crowley's appearance on the stand, persons named by him were called.[44] They as well as Crowley himself were questioned indiscriminately about the period since they knew Crowley as well as when they knew him, and about any opinion, association, or activity in the field of political persuasion which could be suspect, for the most part unconnected with educational institutions (See Hg. 5756-5761, 5785-5790, 5793-5795, 5798-5801, 5821, 5832, 5834). Such an indiscriminate questioning of witnesses cannot be said to serve any purpose other than that which the Committee indicated: to expose and pillory whoever and whatever came to hand.

3. *Relation of Investigation to Efforts to Overthrow the Government*

Let us assume *arguendo* that the summoning of petitioner and the investigation of education in which his interrogation was physically included, should be viewed in the light of legislative purposes that the Committee might have had. The court below indicated that, as urged in the *Watkins* case, the ultimate alleged justification for the investigation might be Congressional concern with "efforts to overthrow the government by force and violence" (*Watkins*, 354 U. S. at p. 204; R. 284). But

> "the mere semblance of legislative purpose would not justify an inquiry in the face of the Bill of Rights. The

[44] See Hg. 5768, 5772, 5773, 5777-5778, for Crowley's naming of witnesses who succeeded him.

critical element is the existence of, and the weight to be ascribed to, the interest of the Congress in demanding disclosures from an unwilling witness. We cannot simply assume, however, that every congressional investigation is justified by a public need that overbalances any private rights affected. To do so would be to abdicate the responsibility placed by the Constitution upon the judiciary to insure that the Congress does not unjustifiably encroach upon an individual's right to privacy nor abridge his liberty of speech, press, religion or assembly . . . [T]he courts . . . (must) strike a balance between the public need for a particular interrogation and the right of citizens to carry on their affairs free from unnecessary governmental interference." *Watkins*, at pp. 198-199, 205-206.

And the countervailing interest of the State must be strong and compelling to justify an infringement of First Amendment rights, considering their importance to the democratic structure. *Sweezy*, 354 U. S. at p. 251, at p. 265 (concurrence); *National Association*, 2 L. ed 2d at p. 1500.

In determining whether there was any "public need" for the instant investigation and interrogation of petitioner from the standpoint of efforts to overthrow the government, the salient consideration is the obvious "remoteness of subject" (*Watkins*, at p. 204) between the subject of the investigation on the one hand, and, on the other, efforts to overthrow the government or expression so proximate to such efforts that it is within the legislative sphere.[45] As we have already emphasized, the Committee avowed at the outset of the investigation and in its course, prior to the summoning of petitioner, that it was directed at influences on thought; and the interrogation of the leading witnesses

[45] See note 7.

further confirmed that the focus of the investigation was belief, association affecting belief, and the reflection of belief in abstract discussion or peaceful political persuasion. (*Supra* pp. 30-32.) Thus, the Committee was fully aware of the distinction between the two spheres of Communist activity, repeatedly recognized in the decisions of this Court:[46] the sphere of discussion and normal political activity on the one hand, and the sphere of incitement of action to overthrow the government on the other. The Committee's statements and its interrogation of leading as well as succeeding witnesses indicate that it at no time thought it likely or had reason to believe that the instant investigation in the former sphere would produce information in the latter—that is, as to efforts or incitement of action to overthrow the government[47]—nor was any such information in fact produced (*supra*, pp. 32-42).

As to petitioner himself, the basis for summoning him was his alleged membership in a group, the Haldane Club, engaged in discussion of Marxism, particularly in relation to the arts (*supra*, pp. 7-8); there was no information that overthrow of the government was discussed in the group even as an abstract theory, and *a fortiori*, no indication of any advocacy of action to overthrow the government.

Certainly abstract discussion of Marxist theories and peaceful political persuasion on issues of the day are a number of "removes"[48] from that expression relating to

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[46] See *Nowak* v. *United States*, 356 U. S. 660, 666-667; *Rowoldt* v. *Perfetto*, 355 U. S. 115, 117-118, 120; *Yates* v. *United States*, 354 U. S. 298, 330-331; *Dennis* v. *United States*, 341 U. S. 494, 516; *Schneiderman* v. *United States*, 320 U. S. 118, 155-157.

[47] The Committee was aware beforehand of the testimony that could be adduced at the public hearings, by virtue both of the Committee investigator's interviews with the witnesses and preliminary hearings in executive session.

[48] See *Yates* v. *United States*, 354 U. S. 298, 324.

overthrow of the government which may be within Congress' legislative and therefore its investigative sphere.[49] For, expression must be free from government control unless it constitutes a clear and present danger of evil action; Congress cannot legislate against expression unless, at the least, it is advocacy and incitement of concrete action to overthrow the government.[50] Even if these limits of Congressional power over advocacy be viewed most liberally, the expression of opinion here involved and *a fortiori* the thoughts and beliefs here under investigation are extremely remote from such advocacy and thus from a subject of legitimate Congressional concern under the Constitution.

In sum, the connection between the subject of this investigation and the interrogation of petitioner on the basis of his alleged membership in the Haldane Club, on the one hand, and incitement of any action to overthrow the government on the other, was highly remote, speculative, and shadowy;[51] the investigation cannot be said to have a "substantial bearing" on the matter of posited legislative concern. See *National Association*, 2 L. ed 2d at p. 1501. Such a mere tangential connection with an evil within the legislative province certainly cannot justify an investigation which, like the instant one, seriously interferes with First Amendment rights. Even if such a connection might suffice

[49] The power to investigate does not "extend to an area in which Congress is forbidden to legislate . . ." *Quinn* v. *United States*, 349 U. S. 155, 161.

[50] See *supra* note 7.

[51] See *Watkins* at p. 204; *Sweezy*, at pp. 251-254; at p. 265 (Frankfurter, *J.*, concurring; Harlan, *J.*, joining). In the language of the older cases, the investigation was merely a "fishing expedition" from the standpoint of obtaining information on incitement of concrete action to overthrow the government. *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434, 445 (opinion by Holmes, *J.*); *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1, 26; *Federal Trade Commission* v. *American Tobacco Co.*, 264 U. S. 298, 305-306.

in other situations, "when weighed against the grave harm resulting from [this] governmental intrusion" in the field of freedom of belief and expression, the alleged justification "appears grossly inadequate." *Sweezy*, at p. 261 (concurrence). More must be shown to justify this investigation than the highly remote connection—which is the most the government can show—between it and efforts to overthrow the government. To justify an invasion of these vital rights, the "'subordinating interest of the State must be compelling.'" *National Association*, 2 L ed 2d at p. 1500.

4. *Relation of Investigation to Veterans' Benefits and Research Grants*

In the first opinion of the court below, it was suggested that Congress had a concern with "the Veterans' Readjustment Assistance Act . . . which provides that educational stipends shall not be paid to veterans in attendance at educational institutions listed by the Attorney General as totalitarian, fascist, communist or subversive" (R. 282). Again it must be observed that the investigation was not in fact directed at gathering information relative to the subject suggested by the Court of Appeals as a justification (*supra*, p. 50). Justification for an investigation must be found in the purpose for which witnesses are summoned and their privacy violated, rather than in the fact that perchance some thought on another subject may occur to the Committee as a result of the investigation.[52] Thus, this investigation cannot be justified in terms of legislative concern with the treatment of veterans.

Passing this point, however, the veterans' legislation cannot be interpreted to mean that there should be discrimination against attendance at an established institution of higher learning because of the presence on the campus

[52] See *supra* note 42.

of Marxist discussion groups or because of the political beliefs and associations of faculty members. This legislation does not therefore show or justify Congressional concern with the beliefs or associations which were here under investigation. Congress cannot be thought to have intended the Attorney General to conduct inquiries into intellectual influences at *bona fide* educational institutions, and to have the power to stigmatize our great institutions of learning as "subversive" on the basis of such an inquiry. Nor could Congress under the First Amendment consider legislation providing for such authority. The government cannot in the grant of privileges "impose conditions which require the relinquishment of constitutional rights;"[53] it cannot, by conditioning its benefits, coerce and restrain thought and expression within the protection of the First Amendment.

As this Court said only recently with respect to the denial of a benefit:

> "To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for this speech . . . [T]he denial of a tax exemption for engaging in certain speech necessarily will have the effect of coercing the claimants to refrain from the proscribed speech. The denial is 'frankly aimed at the suppression of dangerous ideas'" *Speiser* v. *Randall*, 2 L ed 2d 1460, 1468.

At the most, although we are unwilling to make any concession in this respect, Congress might have a legitimate concern, from the standpoint of granting special benefits

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[53] *Frost* v. *Railroad Commission*, 271 U. S. 583, 594. As to the constitutional right to freedom from Government restraint in the area of belief, expression and association here in issue, see *supra* pp. 50, 52-56.

for educational purposes, with whether an institution was of a general educational nature as distinguished from one which concentrated on the teaching of certain doctrines or certain philosophical or ideological material. Certainly, both as a matter of due process and First Amendment right, the Government could not stigmatize an institution or discriminate against it on any lesser basis than the predominating nature of its curriculum and instruction.

Assuming, purely *arguendo*, a legitimate legislative concern with the predominant nature of the curriculum and instruction at educational institutions, the instant investigation into the political beliefs and associations of teachers, and of petitioner in particular for the period of his teaching fellowship at the University of Michigan, would have minimal, if any, relation to this legislative concern, and the infringements of First Amendment freedom involved in the interrogation of petitioner could not be justified on this basis.[54]

As to the other justification for the investigation suggested by the court below in its first opinion—that Congress has a concern with grants for "secret defense projects" in the universities (R. 282)—here again we must point out that the Committee stated that its purpose was to investigate influences on thought; Congressional concern with secret defense projects, like the other possible justifications for the investigation considered by the Court of Appeals, must be deemed a "retroactive rationalization". (*Watkins* at p. 204). Furthermore, here the connection between the

[54] Assuming *arguendo* the legitimacy of this legislative concern, there would at the least have to be some facts with respect to the content of the teaching at the institution indicative of the danger that it might be predominantly "Communist," before a committee could invade First Amendment rights by an investigation like the instant one of individual belief and expression. Compare *Rumely* v. *United States*, 197 F. 2d 166, 172 (C. A. D. C.) aff'd 345 U. S. 41; cases cited *supra* note 51; see Dembitz, op. cit. *supra*, 40 Minn. Law Rev. at pp. 546-551.

questioning of petitioner and the suggested subject seems not only remote but fanciful. To question petitioner, a teaching fellow in social psychology with no connection with secret defense projects or even with the fields in which they were being undertaken, who was alleged to belong to a group discussing Marxism and the arts, in order to get information about any such projects would seem to deserve the label not only of a fishing expedition but perhaps a wild goose chase.

We do not think the Court of Appeals would have offered these insubstantial after-the-fact justifications for the investigation if it had reviewed the situation in the light of the grave effect of the investigation on First Amendment rights, and of the doctrine enunciated definitively after its decision in this Court's *Watkins, Sweezy,* and *National Association* opinions, that an investigation intruding on First Amendment rights cannot be justified by a mere remote and speculative connection with a subject of legitimate concern.[55]

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We may close this discussion of the unconstitutionality under the First Amendment of the instant investigation and interrogation of petitioner by paraphrasing the recent unanimous opinion of this Court in the *National Association* case. There was not here the "compelling" interest of the State which is constitutionally required to justify an investigation restraining the exercise of First Amendment rights: there was here no "interest in obtaining the disclosures . . . which is sufficient to justify the deterrent effect" of the investigation on the "Constitutionally pro-

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[55] Further, as to both the veterans' and the research grants, Congress could not, by virtue of actual or possible grants of benefits engage in an investigation infringing on First Amendment rights which would otherwise be beyond its power. See *Butler* v. *United States,* 297 U. S. 1, 68-71.

tected right of association," belief and expression. 2 L ed 2d at p. 1500. The legislature cannot investigate, any more than it can legislate, by blunderbuss methods when First Amendment rights are involved. The investigation here did not represent "the kind of narrow exception to freedom of expression which a state may carve out to satisfy the adverse demands of other interests of society."[56]

Whatever other authority the Committee may have, it did not, because constitutionally it could not, have authority to conduct the instant investigation and interrogation of petitioner.

IV.

Petitioner's conviction must be reversed because the Committee did not clarify for him either the subject of the investigation or the pertinence thereto of the interrogation.

Petitioner, refusing to answer the questions recited in the indictment as to his and Crowley's membership in the Communist Party, as well as his membership in the Haldane Club and the Council of Arts, Sciences and Professions, objected to the questions on the general ground that an inquiry into his private beliefs and associations was unconstitutional, and noted, among other cases, this Court's opinion in the *Jones* case (R. 227-235, esp. 229). Like the latter point, petitioner's general objection was in essence, an "objection by the witness on grounds of pertinency" (See *Watkins* at p. 214), for petitioner's contention here was

[56] *Burstyn* v. *Wilson*, 343 U. S. 495, 504. See also *Donaldson* v. *Read*, 333 U. S. 178, 184; *Thomas* v. *Collins*, 323 U. S. 516, 530; *Murdock* v. *Pennsylvania*, 319 U. S. 105, 116; *American Federation of Labor* v. *Swing*, 312 U. S. 321, 325; *Cantwell* v. *Connecticut*, 310 U. S. 296, 307; *Schneider* v. *State*, 308 U. S. 147, 161.

that he did not see any justification for his interrogation from the standpoint of any danger or any valid subject for investigation, particularly since he was not a government employee. In response to petitioner's objections, the only explanation indicated by the Committee was that the interrogation would give petitioner an opportunity to "clean up" and relieve himself of embarrassment suffered as a result of Crowley's naming him (R. 221).

Despite the Committee's failure to explain the subject of the investigation or pertinence to petitioner, the Court below held the Committee had in part acquitted itself of its duty of clarification under *Watkins* by virtue of counsel's statement at the opening of the hearing on the day petitioner testified (R. 298). We doubt that the clarification required by the *Watkins* decision can rest on mere assumption of the witness' presence at the proceedings during the period preceding his interrogation. In any event, assuming petitioner's presence from the opening of that day's hearing, we dispute the Court of Appeals' conclusion that it would thereby have been clear to petitioner that the subject of the hearing was "Communist Party activities in the field of education" (R. 302) and that the pertinency thereto of his interrogation would have likewise been clear.

Counsel's statement at the opening of the hearing was that the "field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley. It will deal with activities in Michigan, Boston, and in some small degree, New York" (R. 298, 175). Emphasis by Committee counsel and members was on the latter point—that the purpose of the hearing was to permit Crowley "to come before the Committee and tell his entire story," apparently to exculpate himself because of a previous refusal to testify (R. 174-176, 180-182). If, as the Court below seemed to assume, a witness

has the burden of deducing the subject of the hearing by listening to the interrogation of other witnesses, the interrogation of Crowley and of the witnesses who followed him prior to petitioner also indicated that Crowley's experiences and exculpation rather than education was the subject of the hearing. The statement of the Court below that all the interrogation related to the University of Michigan (R. 298) is erroneous. Rather, Crowley and the other witnesses were to a greater extent questioned about political participation, employment, individuals and organizations that were totally removed from academic life (*supra*, p. 52).

The impression from the interrogations preceding petitioner's was of a dragnet operation, supplementary to clearing Crowley, in which the Committee called available persons of those Crowley had named, and questioned them indiscriminately with respect to any non-conformist political view or act, casting suspicion broadside on them, their employers, and their associations. Indeed, judging from the Committee's 1954 report, the Committee itself did not regard the summoning of petitioner and the session at which he testified as related to the field of education, but merely as an adjunct to hearing Crowley and as part of its general identification of alleged Communists (R. 262).

Thus, if the purpose of the session was, as most of the circumstances indicated, to give Crowley an opportunity to "tell his entire story,"[57] the pertinence of questioning petitioner was certainly unclear; and his objection that he was unable to discern the justification for summoning him most apt.

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[57] If this was in fact the purpose of the hearing, it obviously was outside the Committee's authority. Neither an aimless hearing for the purpose of eliciting whatever testimony happens to be within a particular individual's ken, nor a hearing for the purpose of having a witness "clear" himself, can be thought to serve a legislative purpose.

Furthermore, even if it had appeared with any clarity that the subject of the hearing was "communism in education," the alleged pertinence thereto of the questions asked of petitioner would have been unclear. For, the subject of "communism in education" would be commonly understood to refer to a teacher's reliance on Communist doctrine in his teaching. Certainly none of the witnesses were questioned about "communism in education" from this standpoint, nor was petitioner, though he had himself been teaching immediately prior to the hearing and during part of the period when he had been associated with Crowley.

Because the Committee did not clarify for petitioner either the subject of the hearing nor the pertinence thereto of the questions it asked him, he had no duty to answer (*Watkins* at pp. 214-215).

CONCLUSION

The judgment below should be reversed, and petitioner's conviction held invalid.

Respectfully submitted,

EDWARD J. ENNIS
NANETTE DEMBITZ
c/o American Civil
Liberties Union
170 Fifth Avenue
New York 10, N. Y.

DAVID SCRIBNER
15 William Street
New York 5, N. Y.

Attorneys for Petitioner

ROWLAND WATTS
Of Counsel

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In the Supreme Court of the United States

OCTOBER TERM, 1959

LLOYD BARENBLATT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
J. WALTER YEAGLEY,
Assistant Attorney General,
PHILIP R. MONAHAN,
DORIS H. SPANGENBERG,
Attorneys,
Department of Justice, Washington 25, D. C.

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The majority (R. 291–303) and two dissenting opinions (R. 303–307) in the Court of Appeals, sitting *en banc*, which were rendered following this Court's remand of the case (R. 290; 354 U. S. 930) for consideration in the light of *Watkins* v. *United States*, 354 U. S. 178, are reported at 252 F. 2d 129. The original opinion of the three-judge division of the Court of Appeals (R. 271–285) is reported at 240 F. 2d 875.

JURISDICTION

The judgment of the Court of Appeals following this Court's remand was entered on January 16, 1958 (R. 307). The petition for a writ of certiorari was filed on February 15, 1958. Certiorari was

granted on April 14, 1958 (R. 308; 356 U. S. 929). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the resolution establishing the House Committee on Un-American Activities is invalid as an authorization for the use of compulsory process.

2. Whether the House of Representatives authorized the Committee to conduct by compulsory process an investigation of Communism in the field of education.

3. Whether petitioner had a right under the First Amendment to refuse to tell the Committee whether he was a member of the Communist Party.

4. Whether petitioner objected to the Committee's questions on grounds of lack of pertinency to the subject of inquiry, and whether their pertinency was in any event clear.

STATUTE AND RESOLUTION INVOLVED

2 U. S. C. 192 (R. S. 102, as amended) provides:

> Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprison-

ment in a common jail for not less than one month nor more than twelve months.

Rules X and XI of the Rules of the House of Representatives for the Eighty-third Congress,[1] adopted January 3, 1953, by House Resolution 5, 83d Congress (99 Cong. Rec. 15–24),[2] provided in pertinent part as follows (99 *id.* 16, 18; G. Ex. 2, R. 68–69):

Rule X

STANDING COMMITTEES

1. There shall be elected by the House, at the commencement of each Congress, the following standing committees:

* * * * *

(q) Committee on Un-American Activities, to consist of nine Members.

* * * * *

Rule XI

POWERS AND DUTIES OF COMMITTEES

All proposed legislation, messages, petitions, memorials, and other matters relating to the subjects listed under the standing committees named below shall be referred to such committees, respectively:

* * * * *

17. Committee on Un-American Activities.

(a) Un-American activities.

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[1] It was during the Eighty-third Congress (June 28, 1954) that the refusals to answer the questions here involved occurred.

[2] The Rules which the House thus specially adopted for the Eighty-third Congress were, in pertinent part, identical with its standing Rules (X and XI), as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, 828.

(b) The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (1) the extent, character, and objects of Un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member.

* * * * *

STATEMENT

Petitioner was charged in a five-count indictment (R. 1–2), returned in the United States District Court for the District of Columbia, with having refused, in violation of 2 U. S. C. 192 (*supra*, pp. 2–3), to answer five questions, pertinent to the matter under inquiry, put to him by a subcommittee of the Committee on Un-American Activities of the House of Representatives. These questions were whether he then was or ever had been a member of the Communist Party (counts 1 and 2), whether he had known one Francis Crowley as a member of the Communist Party (count 3), and whether he (petitioner) had ever been a member, while a student at the University of Michigan, of the "Haldane Club of the Communist Party" (count 4) or of the "Council of Arts, Sciences, and Professions" (count 5). Petitioner, having waived his right to a trial by jury (R. 65–66), was found guilty by the court on all counts (R. 67) and was sentenced generally to six months' imprisonment and to pay a fine of $250 (R. 67).

On appeal to the Court of Appeals for the District of Columbia Circuit, the judgment of conviction was, on January 3, 1957, unanimously affirmed by a three-judge division of that court (R. 271–289; 240 F. 2d 875). Thereafter, this Court, on June 24, 1957, on petition for a writ of certiorari to review this judgment, granted the petition, vacated the judgment of affirmance, and remanded the case to the Court of Appeals "for consideration in light of *Watkins* v. *United States*, 354 U. S. 178" (354 U. S. 930; R. 290). The case was thereafter rebriefed and reargued in

the Court of Appeals, which *sua sponte* determined to hear the case on remand *en banc*. On January 16, 1958, the Court of Appeals again affirmed the judgment of conviction (R. 291–303, 307), four judges dissenting (R. 303–307).[3]

The pertinent facts may be summarized as follows: Rule X of the standing Rules of the House of Representatives, as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, provides for a Committee on Un-American Activities as a standing committee to be elected by the House at the commencement of each Congress. Under Rule XI (60 Stat. 823, 828), all proposed legislation relating to the subject of Un-American activities is to be referred to this Committee, which is authorized to investigate "(i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." These standing Rules were, in addition, specially adopted by the House, at the beginning of the Eighty-third Congress (during which the offenses here involved occurred), as part of the rules

[3] The majority opinion was written by Circuit Judge Bastian, who also authored the opinion of the original three-judge division. Chief Judge Edgerton wrote a dissenting opinion in which Circuit Judge Bazelon joined (R. 303–306), and Circuit Judge Fahy wrote a separate dissenting opinion in which Circuit Judge Washington joined (R. 306–307).

of the House for that Congress (H. Res. 5, 83d Congress (R. 68–69; see *supra*, pp. 3–4)).

On February 25, 1953, the Committee commenced a series of public hearings in connection with an investigation which it was conducting into "Communist Methods of Infiltration" into the field of "Education" (G. Ex. 7, p. 1; R. 17, 75).[4] Immediately prior to interrogating the first witness, Representative Velde, the Committee Chairman, made an opening statement setting forth the nature and purpose of the investigation (R. 76–79).[5] The investigation, the Chairman said, was one of a series which the Committee had been conducting into "Communists and Communist activities wherever it has substantial evidence of its existence" (R. 77). "The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field" (R. 77). Pointing out that "[t]he committee is charged by the Congress with the responsibility of investigating the extent, character, and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive

[4] Government Exhibit 7 is part 1 of the printed transcript of the Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., February 25, 26 and 27, 1953, entitled *Communist Methods of Infiltration (Education)*. Excerpts from this transcript appear in the printed record at R. 75–172.

[5] This statement by the Committee Chairman is reproduced in full as an appendix to the original opinion of the Court of Appeals (R. 285–288) and is again referred to in the majority opinion of the *en banc* court upon remand (R. 297).

and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and all other questions in relation thereto that would aid Congress in any necessary remedial legislation" (R. 77), the Chairman observed (R. 77–78):

> It has been fully established in testimony before congressional committees and before the courts of our land that the Communist Party of the United States is part of an international conspiracy which is being used as a tool or weapon by a foreign power to promote its own foreign policy and which has for its object the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence, if necessary. * * *

The Chairman further said that, since "Communism and Communist activities cannot be investigated in a vacuum," the "investigation must, of necessity, relate to individuals" (R. 78). "[T]he objective of this investigation," the statement concluded (R. 79)—

> is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party.

The Committee thereupon proceeded with the taking of testimony (R. 79). Witnesses heard on that day and from time to time thereafter during the year 1953 presented to the Committee "facts within their own knowledge concerning Communist efforts to infil-

trate and dominate the teaching profession within the United States" (G. Ex. 9, p. 9; R. 24, 242).[6]

Illustrative of the testimony was that of the first witness, Robert Gorham Davis,[7] who admitted that he had been, from 1937 to the fall of 1939, a member of a Communist cell on a university campus which included faculty members, teaching fellows, and graduate students (R. 80, 83–84). The members of this cell, Davis testified, received instructions and directives from the Communist Party through paid functionaries of the Party (R. 87, 128). From time to time, they were addressed by Party functionary Philip Frankfeld, whose purpose it was to "educate" them politically (R. 87, 89, 116).[8]

Davis testified that members of the cell would seek to attain positions of leadership in various organizations for the purpose of seeing to it that the policies of such organizations "would be as close to the policies desired

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[6] Government Exhibit 9 is the *Annual Report of the Committee on Un-American Activities for the Year 1953* (H. Rept. No. 1192, 83d Cong., 2d sess.). Excerpts from this report appear in the printed record at R. 241–261.

[7] Davis' testimony is contained in Government Exhibit 7, pages 3–45, and appears in the printed record at R. 79–142.

[8] Frankfeld was one of the defendants convicted in a Smith Act trial. See *Frankfeld* v. *United States*, 198 F. 2d 679 (C. A. 4), certiorari denied, 344 U. S. 922.

Davis testified (R. 124–127) that a pamphlet which he and Granville Hicks, another member of the cell (see *infra*, pp. 15–16), prepared against anti-Semitism was criticized by Frankfeld "with great care and attention" (R. 124) to see that it would be acceptable "[t]o the higher functionaries of the Communist Party" (R. 127).

by the Communist Party as possible" (R. 88).[9] Their primary target in this respect was the local "Teachers' Union" (R. 89, 91, 120). Davis acknowledged that, according to official Communist doctrine as set forth by Lenin, the "chief task of those members of the teaching profession who have taken their stand with the International and the Soviet Government is to work for the creation of a wider and, as nearly as possible, an all-embracing teachers' union" which should become "a broad teachers' trade-union embracing vast numbers of teachers; a union which will resolutely take up its stand on the Soviet platform and the struggle for socialism by means of a dictatorship of the proletariat" (R. 90). To help implement such a policy, Davis testified, "We worked very hard to build up the Teachers' Union" (R. 91). Prior to meetings of the Teachers' Union, the members of the cell used to discuss the candidates which they would propose and support and the policies which they would urge on the Union—policies "which the Communist Party as a whole was interested in having endorsed or adopted" (R. 91). They would also "endeavor to control the selection of delegates from the local Teachers' Union" to "district" and "national conventions" (R. 92).

Davis testified that he attended two national conventions of the Teachers' Union (R. 94) and that at

[9] Although Davis did not realize it until the Russian shift of policy in 1939, he agreed with Committee counsel that, during the period of his membership, "the Communist Party was being used as a tool by a foreign power for the advancement of its own foreign policy," and he stated that Party members "were in a certain sense Soviet nationalists and not working for the broader interests of the American people" (R. 82).

the second convention he attended a Communist Party caucus which was "fairly large" and which "operated very much" as the Communist unit operated within his local union (R. 100). Davis also attended a Communist Party caucus of the Teachers' Union in New York City (R. 103). This caucus comprised representatives from different parts of the country, including New England, the Middle Atlantic States, and the Middle West (R. 106). The purpose of the meeting was "to determine the policies of the Communists who were in positions of leadership within the American Federation of Teachers" (R. 105). The meeting was addressed by Jack Stachel,[10] "a high official" in the Communist Party (R. 104), who outlined the "course of action" the representatives were to take (R. 105).

Another activity of the Communist cell to which Davis belonged was the formation of Marxist study groups (R. 88). These groups were formed, first, "to disseminate Marxism, which is one of their important principles always and everywhere" and, secondly, because "it was a very good way of recruiting members into the Communist Party" (R. 117). Their activities extended into industrial and rural areas[11] (R. 123)

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[10] Stachel was one of the defendants in the Smith Act prosecution which culminated in *Dennis* v. *United States*, 341 U. S. 494.

[11] According to Davis, the role of the Communist teacher in industrial and rural areas was aptly described in an article entitled *The School and the People's Front*, which appeared in the May 1937 issue of *The Communist*, the Party's official theoretical organ, and which states in part (R. 119, 122, 123):

"Such teachers can also be used to advantage to conduct classes in Marxism, Leninism, for workers generally, and many

and included the distribution of the Marxist classics (R. 118).

Davis stated that, whereas efforts were made to recruit faculty members, it was his experience that no attempt was made to recruit students into the Party or to directly influence students in the classroom (R. 95, 98). The primary reason for this was that it was "much too risky", since "students join something and leave it and they talk freely and it would have led to the exposure of the individual members" (R. 98–99).[12] Davis testified that outside the classroom the Communist was "likely to have more influence" (R. 96). Members of his cell adopted "the Communist line" when they addressed political meetings of students, where "the prestige of the teacher" "undoubtedly" had an effect (R. 122). He admitted that "almost certainly" there were student organizations of the Com-

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such teachers should be assigned not to school units but to factory or industrial units where they can have great aid in party education in helping with leaflets, shock papers, and so forth. Others can plan an important role in the educational activities of the Young Communist League.

* * * * * *

"In rural communities teachers who are among the few educated people are looked up to with tremendous respect. They are in a position to become community leaders. As a means of mobilizing the people in the villages and countryside, steps should be taken to try to send Communist teachers into rural communities where they should become active in all community organizations."

[12] Every effort was made to keep the membership of the cell secret from the "rank-and-file" members of the Party because "[t]his was a professional unit and professional units were always particularly protected so that there would be no publicity which would be harmful to the careers of the individual members" (R. 86).

munist Party, which functioned in the same manner as the group in the Teachers' Union (R. 99, 100).

Davis agreed with Committee counsel that "the Communist Party had for its objective the influencing of students without the student realizing or knowing that the teacher was, in fact, a Communist Party member" (R. 120). Its ultimate goal is to have studies "revolutionized" and "cleansed of religious, patriotic, and other features of the bourgeois ideology" with the result that "students will be taught on the basis of Marxian dialectical materialism, internationalism, and the general ethics of the new Socialist society" (R. 119).[12]

Davis further testified that, from his experience, the Party had the following objectives, as set forth in *The Schools and the People's Front*, by Richard Frank, an article which appeared in the May 1937 issue of the Party organ, *The Communist* (R. 119–120, 122):

> The task of the Communist Party must be, first and foremost, to arouse the teachers to class consciousness and to organize them into the American Federation of Teachers, which is the main current of the American labor movement.
>
> In the effort to organize the teachers, every care must be taken to bring together in united front actions all existing teacher organizations. * * *
>
> * * * * * *

[12] Davis testified that these quotations, from *Toward Soviet America*, by William Z. Foster, reflect "the pattern * * * followed in Communist countries" (R. 118–119).

> Communist teachers cannot afford to ignore this fact: That they come in contact with the children of the masses; that they are responsible for training these children.
>
> Communist teachers are, therefore, faced with a tremendous social responsibility. They must consider not merely their own teacher problems but the problems of the children. They must take advantage of their positions without exposing themselves to give their students, to the best of their ability, working-class education.
>
> * * * * *
>
> Only when teachers have really mastered Marxism and Leninism will they be able skillfully to inject it into their teaching at the least risk of exposure and at the same time to conduct struggles around the schools in a truly Bolshevik manner.

Davis testified that the following "sum[ming] up" of "the substance" of his testimony by Committee member Jackson was accurate:—that the Communist Party (1) sought to "recruit teachers and professors" into the Party, (2) "la[id] down certain broad policies which these teachers and professors were expected to follow," (3) expected such recruited teachers to "infiltrate other teacher groups with the idea of putting forward policies and directives enunciated by the Communist Party," (4) "exercise[d] generally, on behalf of the Communist Party, what influence they could," and (5) "influence[d], to the extent possible, the election of group leaders * * * who were individuals known to be favorable to the policies of the Communist Party" (R. 136–137).

Except for the fact that "the situation probably requires much more secrecy", Davis testified that it can be "taken for granted" that the same Communist techniques, which he described in his testimony, are being followed today (R. 94). He warned that, while "the open influence" of the Party among teachers and students is "very slight now" (R. 95), members are "[m]uch more" subject to discipline than previously (R. 135). He felt that it was "necessary to have all possible information about the activities of the Communist Party itself for security reasons" and that "in the present situation * * * the Government should explore and expose the ramifications of the Communist Party" (R. 97).

The next day, February 26, 1953, Granville Hicks testified before the Committee.[14] Hicks testified that he joined the Communist Party during the winter of 1934–1935 and remained a member until September 1939 (R. 144). During part of this time, from 1938 to 1939, he belonged to the same Party cell as Davis (R. 144, 154), who, according to Hicks, had described its activities to the Committee "very well" (R. 157). He admitted that at times he transmitted directives and instructions to the cell since he "was carrying on a rather wide range of Communist propaganda activities, and therefore, was likely to go into Phil Frankfeld's office, and he would tell me things he wished our group would discuss or would do" (R. 158). He spoke "at various meetings of many kinds" on an average of two or three times a week for "the pur-

[14] Hick's testimony is contained in Government Exhibit 7, at pp. 95–115, and appears in the printed record at R. 143–172.

pose of advancing the cause of communism generally" (R. 158). In the light of his experience, Hicks believed that "the popular front was simply a dodge * * * to serve the foreign policy of the Soviet Union" and that the purposes of the Party in organizing branches in the colleges were "to carry out the existing line" of the Party and "to try to have a corps of disciplined revolutionaries whom they could use for other purposes when the time came" (R. 160). While of the view that the problem of Communist teachers should be treated on a "calculated risk" basis (R. 165), Hicks testified (R. 163):

> Well, I feel, as I said a moment ago, that the evidence is overwhelming; that the Communist Party in this country is and always has been dominated by the Soviet Union. I think that every member of the Communist Party is an actual or a potential agent of the Soviet Union.[15]

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[15] Explaining what he meant by "potential agent," Hicks stated (R. 163):

"I would like to stress that word 'potential.'

"Any given individual at any given moment may not be an agent, even though he is a member of the Communist Party; that is, when a test comes; that would make him an agent, in effect, of the Soviet Union. He may break with the party, as I believe many people have done. That happens not only in moments when the party line changes. I think that has happened to individuals who were given assignments that they suddenly saw were in effect treasonous, and they would not carry such assignments out, and they quit then and there. So, as I say, you cannot at any moment, at any given moment, say a particular member of the Communist Party is an agent of the Soviet Union, but I think you can say he is potentially an agent, and that that is exactly how the Communist Party would like to use him if it could."

During 1954, the Committee continued its inquiry into Communism in education. On June 28, 1954, Francis Crowley, in the presence of petitioner (R. 220), testified before the Committee.[16] In introducing Crowley to the Committee, the committee counsel said in part (R. 175):

> The field covered will be in the main communism in education and the experiences and background in the party by Francis X. T. Crowley.
>
> It will deal with activities in Michigan, Boston, and in some small degree, New York.

Crowley testified extensively as to his Communist Party activities while he was enrolled as a student at the University of Michigan from August 1947 to June 1950 (R. 186–217). While a student there, he said, he was a member of the "Neafus Club," a Party organization comprised of undergraduate students which operated, for the most part, on a secret basis (R. 187–189). But in addition to secret meetings the club also had open meetings to which outsiders were invited (R. 189). The open meetings were represented as study groups and were not identified as Communist Party meetings (R. 189). Crowley testified that the Club had "a great deal of influence" and used "every method that Communists could devise to influence the student body opinion in the

[16] Crowley's testimony is contained in Government Exhibit 8, the printed transcript of the Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 2d sess., June 28 and 29, 1954, entitled *Communist Methods of Infiltration (Education—Part 9)*. It appears in the printed record at R. 175–217.

direction of the Communist movement" (R. 198). Over a period of years, as students came and left the University, Crowley testified, the total membership of the Club was "staggeringly large," like a "revolving door" (R. 197–198).

Early in 1950, Crowley testified, he transferred to the "Haldane Club" of the Communist Party, a group composed of graduate students and teaching fellows at the University (R. 203), which was "even more secret" than the Neafus Club (R. 204). Through his membership in the Haldane Club, he testified, he was "propagandized into believing" that South Korea was the aggressor in the Korean war (R. 215). Although the Club appeared to him at the time to be chiefly "an intellectual group, discussion group" (R. 215), he "definitely" felt, as of the time of his testifying, that the Communist Party was "a conspiracy and not a political party" (R. 217).

Crowley testified that he shared an apartment with petitioner while they were both graduate students at Michigan in 1950 and that petitioner was likewise a member of the Haldane Club of the Communist Party during that time (R. 209–210).

Following Crowley, the Committee heard the testimony of Robert H. Silk (G. Ex. 8, pp. 5783–91), Norman Cazden (*id.*, pp. 5791–6), and Lester Beberfall. (*id.*, pp. 5796–5801), all of whom had been identified by Crowley as fellow members of the Communist Party with him at the University of Michigan at some time during the period 1947–1950 (*id.*, pp. 5772–3, 5778). These witnesses were questioned about their Communist Party activities at the University

of Michigan and at other educational institutions (*id.*, pp. 5784–86, 5792–3, 5795, 5797–800). All three, admitting that they had heard Crowley's testimony concerning them, invoked their privilege against self-incrimination and refused to answer all such questions (*id.*, pp. 5784, 5792, 5797).

Petitioner, who also had heard Crowley's testimony (R. 220), was next called to testify.[17] He admitted that he had been a teaching fellow at the University of Michigan from 1948 to 1950 (R. 239), and that he knew Crowley (R. 220), but refused to state, after having been specifically ordered to do so, whether he then was or ever had been a member of the Communist Party (R. 222–225, 237–238) and to answer the other questions forming the subject-matter of the various counts of the indictment (R. 237–238; see *supra*, p. 5).[18] In so refusing he specifically dis-

[17] Petitioner's testimony is contained in Government Exhibit 8, at pp. 5801–5814. It appears in the printed record at R. 218–241.

[18] Among the questions which petitioner refused to answer was whether he had ever been a member of the "Council of Arts, Sciences and Professions." Donald T. Appell, who had been an investigator for the Committee for ten years (R. 33), testified at petitioner's trial that he had made an investigation of the University of Michigan Chapter of the Council of Arts, Sciences and Professions (R. 62), a campus organization which was required to register with the Dean of Men (R. 63). After a study of its membership list, which was provided by the Dean, the Committee had reason to believe that "a majority of its officers were members of subversive organizations of the Communist Party" (R. 64). The organization was eventually ruled off campus as a student organization after a finding by the University authorities that a "great many of the members" were not actually students (R. 64).

claimed reliance on his privilege against self-incrimination (R. 224–226, 240). His refusals were based, he said, on his belief that the questions asked involved an inquiry into his "political beliefs," "religious beliefs," "personal and private affairs," and "associational activities," and that any such inquiry was "beyond the powers of this committee" (R. 226, 228). He did not ask the Committee to explain how the questions which he refused to answer were pertinent to the subject of the inquiry, or to state what that subject was, nor did he give any indication that he was not fully aware of the pertinency of the questions to the subject of inquiry.

At the close of petitioner's testimony, before petitioner had been excused, the following comments were made by the members of the Committee (R. 240):

> Mr. DOYLE. Mr. Chairman, I think the record should show that at this time there are pending before the United States Congress several active bills dealing with the question of subversive activities, dealing with the question of the Communist Party, dealing with the question of the responsibility that we have as a congressional committee under Public Law 601. * * * And that this witness and these other witnesses could help us in line with our Public Law 601 responsibility to have hearings with reference to recommendations for legislation in this area under Public Law 601 in accordance therewith.
>
> Mr. VELDE. I concur with you, Mr. Doyle, and I wish to further state that the record should show that the evidence or information contained in the files of this committee, some of

> them in the nature of evidence, shows clearly that the witness has information about Communist activities in the United States of America, particularly while he attended the University of Michigan.
>
> That information which the witness has would be very valuable to this Committee and its work.
>
> It is the opinion of the committee, at least the Chair, that the committee has a constitutional legal right in all ways and forms and means to get the information which has been requested from the witness.

The Committee thereafter reported the fact of petitioner's contumacy to the House of Representatives. In its report (H. Rept. No. 2457, 83d Cong., 2d sess. (G. Ex. 4, reproduced at R. 69–73 and at 100 Cong. Rec. 11609–11613)), the Committee notified the House of petitioner's appearance before it and his refusal to answer Committee questions (R. 70–71). It advised the House that petitioner's refusals had "deprived your committee of necessary and pertinent testimony and places the said witness in contempt of the House of Representatives of the United States" (R. 73).

The exact questions which petitioner refused to answer (see *supra*, p. 5) were stated in the report (R. 71), which also set forth in its entirety the transcript of petitioner's testimony before the Committee, including the context in which the questions were propounded and petitioner's stated reasons for refusing to answer them (R. 72–73, 218–241).[18] The report was,

[18] Included in this transcript, as reproduced in the report (see R. 72–73), was the formal statement of petitioner's objections

on July 23, 1954, "by direction of the Committee on Un-American Activities," submitted to the House, on the floor of the House, by Committee Chairman Velde (100 Cong. Rec. 11609) and read by the Clerk (100 *id.* 11609–11613). The Committee Chairman then offered a resolution—H. Res. 666, 83d Cong., 2d sess. (G. Ex. 5, R. 73–74), set forth at 100 Cong. Rec. 11613—resolving that the Speaker of the House certify the Committee's report of petitioner's refusals, "'together with all of the facts in connection therewith,'" under the seal of the House to the United States Attorney for the District of Columbia, to the end that petitioner be proceeded against as provided by law. The House agreed to the resolution (100 Cong. Rec. 11613), the Speaker certified the report to the United States Attorney (G. Ex. 6, R. 74–75), and petitioner's prosecution followed.

SUMMARY OF ARGUMENT

I

The resolution establishing the House Committee on Un-American Activities is not invalid as an authorization for the use of compulsory process.

A. This Court, in *Watkins* v. *United States,* 354 U. S. 178, criticized the Committee's authorizing resolution, but (as is clear from the opinion) did not hold the resolution invalid.

B. Whatever justification there may be for criti-

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to the Committee's questions, which the Committee had incorporated in full in the transcript as "Barenblatt Exhibit No. 1" (R. 227–235). This statement, as noted by the Court of Appeals (R. 299), was in the nature of a "lengthy legal brief attacking the jurisdiction of the committee * * *."

cism of the authorizing resolution on its face on grounds of vagueness and imprecision, the resolution comes before the Court, not in its bare terms alone, but with a "persuasive gloss of legislative history" (*United States* v. *Witkovich*, 353 U. S. 194, 199) which shows beyond a doubt that there is one subject, above all others, which the House of Representatives has desired and does desire this Committee continuously to investigate and periodically to report on to it, That subject is Communism, in its various aspects and facets, and the menace posed by that system and ideology to American government and institutions.

II

The Committee was authorized to conduct by compulsory process an investigation of Communism in the field of education.

A. *Sweezy* v. *New Hampshire*, 354 U. S. 234, does not require that the Committee's charter should be construed as excepting the field of education from the reach of the Committee's processes; for *Sweezy* is distinguishable from this case in at least two decisive respects. First, unlike the New Hampshire Legislature involved in *Sweezy*, the legislative body here concerned (the House of Representatives) retained at all times responsibility for the actions of its Committee, which could only report to its parent body and recommend action with respect to recalcitrant witnesses. The House itself cited petitioner for contempt, and did so only after being fully apprised of the circumstances surrounding his being called as a witness. Secondly, while the questions which Sweezy was con-

victed for refusing to answer related to his connections and associations with the *Progressive* Party, the Committee's inquiry in this case was concerned with the *Communist* Party's infiltration and penetration of the field of education, and the questions asked of petitioner were limited to his membership and activities in the Communist Party. Whatever view one may have as to the character of the Progressive Party as a legitimate political party, the Congress has the gravest of reasons for *not* considering the Communist Party as a conventional political party.

B. The House has affirmatively indicated that inquiry into Communism in education is within the Committee's charter.

1. Congress, at the time of petitioner's appearance, had already taken action in accordance with the findings of the Committee in this area, by enacting Section 228 of the Veterans' Readjustment Assistance Act of 1952, which deals with education.

2. The House, in 1953, overwhelmingly voted funds to finance the Committee's work with full knowledge that the Committee had recently commenced an inquiry into Communism in education and was about to continue the inquiry.

3. In 1954, the House again appropriated funds with which to finance the Committee's work, again by an overwhelming vote, after the Committee had made a full report on its activities in the field of education.

4. Since the Committee's 1953–54 inquiry into Communism in education involved in this case, the House has twice renewed the Committee's charter, unchanged.

5. The very act of the House in citing petitioner for contempt constituted ratification of the Committee's interpretation of its charter as authorizing inquiry in the field of education.

III

Petitioner had no right under the First Amendment to refuse to tell the Committee whether he was a member of the Communist Party.

A. A witness before a congressional committee conducting a proper inquiry into the nature and extent of Communist infiltration into an area with which Congress has a legitimate legislative concern has no right under the First Amendment to refuse to disclose whether he is or has been a member of the Communist Party.

1. While Congress has no general power to inquire into political beliefs and associations, it does have the power to inquire into the nature, character, and activities of, the seriousness of the danger emanating from, and other aspects (including the number and identity of its members) of the particular organization known as the Communist Party of the United States. This is because there is—at the very least—the strongest reason to believe that that organization, dominated and controlled by a foreign power, seeks, under the cloak and style of a domestic political party, to subvert and destroy the American form of government by force and violence and other unconstitutional means. It is too late in the twentieth century to treat Communist Party membership as if it were of the

same type and order as membership in one of the conventional political parties.

2. It is for these reasons that the lower courts have correctly upheld the power of Congress, in proper cases, to inquire whether a witness is or has been a member of the Communist Party. "If Congress has power to inquire into the subjects of Communism and the Communist Party," as was said in *Barsky* v. *United States*, 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843, "it has power to identify the individuals who * * * belong to the party." For "Personnel is part of the subject" (*ibid.*).

B. The Committee had a valid legislative purpose in interrogating petitioner which outweighed his interest in nondisclosure.

1. Congress has a legitimate interest in the problem of Communist infiltration of the field of education. While education is a matter primarily of State and local concern, the long history in this country of federal enactments directly or indirectly subsidizing education at all levels shows that this subject is also a matter of vital concern to the Federal Government. These federal programs—involving the annual expenditure of millions of dollars of federal funds—make clear why it is a matter of grave concern to the Congress and its committees, particularly the House Committee on Un-American Activities, to be thoroughly informed with respect to whether and to what extent the faculties and administrative staffs of the nation's educational institutions have been penetrated by persons who are members and subject to the discipline of the Communist Party. One of these programs in par-

ticular—the widely prevalent utilization by the Department of Defense, the Atomic Energy Commission, and other agencies of the Federal Government, pursuant to government contracts with individual colleges and universities, of the personnel and facilities of these institutions in programs of research and development, much of it highly classified—presents an especially difficult and sensitive aspect of Congress' legislative concern with the problem of Communism in education, and the record of the hearings reflect the emphasis which the Committee placed upon this phase of its inquiry.

2. The Committee's questions to petitioner were related to a legitimate legislative inquiry into Communist infiltration into education.

(*a*) The statement in the Committee's 1954 *Annual Report* that "[t]he 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" does not support petitioner's contention that the Committee's sole purpose in interrogating him was to "expose for the sake of exposure." *Watkins* v. *United States*, 354 U. S. 178, 200. A reading of the full report indicates that the primary purposes of the inquiry were in aid of legislative processes.

(*b*) A legislative inquiry need not be restricted to those facts which prove the need for new legislation, nor is it limited to the precise area which Congress has power to regulate. The power to investigate is broader than the substantive authority which may eventually be exerted, for not until the whole region

of facts has been canvassed can it be determined where the boundaries of regulation should be drawn. Judicial inquiry into a committee's "legislative purpose" must not be restrictive or hostile, but must take account both of the powers of Congress and of its pressing need to inform itself broadly.

(c) The record does not support petitioner's contention that the "articulated purpose and focus" of the Committee's inquiry was merely the Communist Party's ideological influence on thought, discussion, and expression. The Committee was investigating the Party as an agency of a foreign government, dedicated to the ultimate overthrow of our government by unlawful means. It is wholly unrealistic to suggest that, because the conspiratorial aspects of the Party should properly be the main focus of inquiry, the "intellectual" or "ideological" aspects of that conspiracy must be forbidden territory—even to touch upon which renders the entire inquiry invalid as an illicit invasion of constitutionally protected freedoms.

3. Petitioner's interest in nondisclosure is subordinate to the Congressional interest. The view of the American Association of University Professors, as *amicus curiae*, that compelling the disclosures here attempted constituted an unjustifiable infringement of academic freedom is based on the untenable assumptions (1) that the Communist Party is merely another political party; (2) that petitioner was questioned concerning his beliefs, studies, or teaching; (3) that petitioner was justified in refusing to answer the questions involved here because other witnesses at

other times and before other committees may have been subjected to improper interrogation; (4) that education is a "special" domain to which "special considerations"—applicable to no other area of national affairs—must govern in any judicial consideration of the congressional power to investigate Communism; and (5) that all the requirements of academic freedom have constitutional status. The *amicus'* views, moreover, are not shared by other responsible spokesmen for the academic community.

IV

There is no foundation for petitioner's claim that his conviction must be reversed because he was not sufficiently apprised of the pertinency of the questions to the subject of the inquiry.

A. Petitioner at no time objected to the questions on grounds of lack of pertinency. *Watkins* requires a witness to make such objection (as a condition of his later defending himself against contempt charges on grounds of lack of pertinency), so as to give the Committee an opportunity to explain the basis of pertinency should that basis not already be clear.

B. In any event, the pertinency of the questions was undisputably clear. Petitioner admitted having heard the testimony of witness Crowley, who preceded him on the stand, and it was clear from that testimony and the surrounding circumstances that the subject of the inquiry was Communism in education. The pertinence to that subject of the questions put to petitioner was equally clear.

ARGUMENT

The wide-ranging arguments by petitioner and the *amici* call for a delineation of the precise problem involved in this particular case. In the course of an inquiry by the House Committee on Un-American Activities concerning Communists in educational institutions, petitioner refused to answer five questions. The main unanswered questions related to his present and past *membership in the Communist Party* and the "Haldane Club *of the Communist Party*" (at the University of Michigan); and to his knowledge of "Francis Crowley *as a member of the Communist Party*" (emphasis added).[20] Thus, petitioner refused to tell whether he himself was a present or a past member of the Communist Party, and whether he had known as a Communist Party member a man who had already openly admitted such membership. This case involves a direct inquiry as to Communist Party *membership*. It does not involve questions as to one's beliefs or general associations or political thinking. And though petitioner had been a student and teacher at Michigan and was a teacher at another institution at the time of the inquiry, the questions did not relate to the content of either his studies or his teaching. Nor did the questions demand that petitioner "inform" against old associates. Rather, he was asked about himself and about a colleague who, to petitioner's certain knowledge, had already openly disclosed his Party activities. Moreover, the Committee did not

[20] Crowley had previously admitted his Party membership (*supra*, pp. 17–18), and petitioner knew of this admission.

haphazardly or casually choose petitioner as a witness; it had very substantial information that he knew about Communist Party activities at the University of Michigan, and might still be a Party member. The crux of the case is that, in these circumstances, petitioner refused even to tell the Committee whether he himself was a *present member* of the *Communist Party*,[21] and his conviction must be judged on that basis.

In that light, we discuss in order the contentions that (1) the Committee's authorizing resolution is too vague to support the compulsory taking of testimony in any inquiry whatsoever; (2) the Committee was not authorized by the House of Representatives to investigate Communism in the field of education; (3) petitioner's refusal was protected by the First Amendment; and (4) petitioner was not sufficiently apprised of the pertinency of the questions to the subject of the inquiry.

I.

The resolution establishing the House Committee on Un-American Activities is not invalid as an authorization for the use of compulsory process

Petitioner contends, first, that the resolution establishing the House Committee on Un-American Activities—Rule XI of the Rules of the House of Representatives as adopted by House Resolution 5, 83d Congress (*supra*, pp. 3–4)—is wholly invalid as an authorization for the use of compulsory process, not merely

[21] Watkins freely answered questions about himself. *Watkins* v. *United States*, 354 U. S. 178, 183–4.

for an inquiry into the field of education, but for any inquiry whatever (Pet. Br. 20–25).

A. This contention—which has the support of two of the dissenting judges below (Chief Judge Edgerton and Judge Bazelon (R. 304–305)), but not of the other two (Judges Fahy and Washington (R. 306–307))—proceeds on the assumption that this Court, in *Watkins,* 354 U. S. 178, held, in the words of Chief Judge Edgerton (R. 304), that "the Committee on Un-American Activities had no authority to compel testimony"—*i. e.,* on any subject whatever—"because it had no definite assignment from Congress." The argument is that this Court in *Watkins,* to use the expression of the majority opinion below (R. 292, 294), "struck down" the House Un-American Activities Committee's authorizing resolution as invalid. We submit, however, that the majority are correct in their conclusion that, while this Court on several grounds and "in no uncertain terms" "criticized the resolution creating the Committee" (R. 293), it did not invalidate it.

In the first place, as the majority note (R. 294), if this Court "had intended to strike down the resolution, it would have said so in so many words. It would not have left so vital an issue to inference or interpretation." For "[t]he far-reaching result of such a holding would be that the Committee, established by action of the entire House of Representatives, would be rendered helpless and would not even be able to summon a witness, much less have him testify" (*ibid.*). And "nowhere in the *Watkins*

opinion does the Court use language essential to effectuate [such a] result * * *" (*ibid.*).

In the second place, as the court further notes (R. 295), had this Court "struck down the resolution creating the Committee the matter would have been ended, without the further, extended discussion found in *Watkins*. We cannot assume the rest of the opinion to be, nor do we read it as, mere dictum."

Thirdly, as the opinion below also observes (R. 295–296), this Court "cited in *Watkins* a number of cases, both in [this] Court and in Courts of Appeals, bearing on convictions sustained under the same resolution," without any intimation that such cases should have been or could have been "decided by the simple process of voiding the resolution establishing the Committee."[22]

Fourthly, we agree with the majority below (R. 295) that "it is clear that [this] Court was familiar with the present case as it is specifically referred to in note 34 of the opinion in *Watkins* [354 U. S. at 200]. [This] Court certainly knew, therefore, that Barenblatt's conviction grew out of testimony taken under the same resolution." It is, accordingly, "reasonable to assume that, had the resolution under which both Watkins and Barenblatt were questioned been stricken in its entirety, this case would have been *reversed* on authority of *Watkins* rather than *remanded* for consideration 'in light of' that opinion" (R. 295; emphasis in the original).

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[22] A number of such cases are cited in footnote 5 of the majority opinion below, at R. 295.

And, finally, Mr. Justice Frankfurter's concurring opinion (354 U. S. at 216–217)—stating his understanding of the Court's opinion, in which he joined—does not indicate the holding to be that the Committee's charter was void or wholly incapable of supporting a contempt conviction.

All these considerations show, in our opinion, that *Watkins* did not invalidate the Committee's enabling resolution as an authorization for the use of the processes of subpoena.

B. Apart, moreover, from petitioner's mistaken interpretation of what *Watkins* held, there is no sound basis for his contention that the Committee's authorizing resolution "is so sweeping and indefinite" that "there can be no certainty any subject of investigation is one on which Congress actually desires information" (Pet. Br. 21). For, whatever justification there may be for criticism of the authorizing resolution *on its face* on grounds of vagueness and imprecision (cf. *Watkins*, 354 U. S. at 202), the resolution comes before the Court, not in its bare terms alone, but with the gloss of a lengthy legislative history—which shows beyond a doubt that there is one subject, above all others, which the House of Representatives has desired and does desire this Committee continuously to investigate and periodically to report on to it. That subject is Communism, in its various aspects and facets, and the menace posed by that system and ideology to American government and institutions.[23]

[23] On the general subject of the interpretation and validity of the charters of Congressional committees, see the Brief for the United States in *Flaxer* v. *United States*, No. 60, this Term,

The language of House Rule XI—authorizing the Committee on Un-American Activities "to make from time to time investigations of (1) the extent, character, and objects of un-American propaganda activities in the United States, (2) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation"—is identical with the language of House Resolution 282, 75th Cong., 3d sess. (83 Cong. Rec. 7568), which, in 1938, created the Committee on Un-American activities as a special committee, popularly known as the Dies Committee. It is clear from the debates on that resolution (83 Cong. Rec. 7568–7586) that Congress was primarily concerned with two developments in this country. One was the activities of the German-American Bund in the United States, including the establishment of Nazi military camps for the purpose of recruiting and training young people who would pledge their allegiance to Germany rather than the United States (*id.*, pp. 7569, 7570, 7572, 7575, 7577, 7583, 7584). The other was the activities of the Communist Party, which was then as now believed to be dominated by another foreign power—the Soviet Union (*id.*, pp. 7571, 7573, 7577, 7583–7586). The

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at pp. 36–37, 38–40, 49–50; Brief for the United States in *Watkins* v. *United States*, Oct. Term 1956, No. 261, at pp. 28–30, 69–73; and Brief for the United States in *Emspak* v. *United States*, Oct. Term 1953, No. 67, at pp. 66–71, 78–95.

term "un-American propaganda activities" was meant to include, at the very least, "propaganda designed to overthrow our Government by force and violence" (*id.*, p. 7580) and also activities on the part of foreign governments, through group action or otherwise, to influence American public opinion in such a manner that domestic and external affairs would be affected (*id.*, pp. 7569, 7571, 7580–7581). The clear intent of the House was that Communist activities came within the scope of the resolution and were to be investigated.

The charter of the Committee was subsequently renewed five times by overwhelming majority votes.[24] In 1945, the Committee was made a standing committee of the House (91 Cong. Rec. 10, 15), and a year later its charter was embodied in the Legislative Reorganization Act of 1946 (60 Stat. 812, 828). Since that date the provisions of the Act relative to the Committee have at the commencement of each Congress been made a part of the House rules for that Congress,[25] and resolutions have from time to time been passed appropriating funds to enable the Com-

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[24] H. Res. 26, 76th Cong., 1st sess., 84 Cong. Rec. 1098 (vote: 344 to 35 (84 Cong. Rec. 1127–1128)); H. Res. 321, 76th Cong., 3d sess., 86 Cong. Rec. 532 (vote: 344 to 21 (86 Cong. Rec. 604–605)); H. Res. 90, 77th Cong., 1st sess., 87 Cong. Rec. 886 (vote: 354 to 6 (87 Cong. Rec. 899)); H. Res. 420, 77th Cong., 2d sess., 88 Cong. Rec. 2282 (vote: 331–46 (88 Cong. Rec. 2297)); H. Res. 65, 78th Cong., 1st sess., 89 Cong. Rec. 795 (vote: 302 to 94 (89 Cong. Rec. 809–810)).

[25] H. Res. 5, 80th Cong., 1st sess., 93 Cong. Rec. 38; H. Res. 5, 81st Cong., 1st sess., 95 Cong. Rec. 10; H. Res. 7, 82d Cong., 1st sess., 97 Cong. Rec. 17, 19; H. Res. 5, 83d Cong., 1st sess., 99 Cong. Rec. 15; H. Res. 5, 84th Cong., 1st sess., 101 Cong. Rec. 11.

mittee to continue its work.[26] It is clear from the debates preceding the adoption of these numerous resolutions that a desire on the part of the House that the Committee continue its investigations of Communism was the reason for the House's periodic renewal of the Committee's charter and its regular voting of appropriations to finance the Committee's work (84 Cong. Rec. 1101, 1107, 1109, 1111–1112, 1290–1291; 86 Cong. Rec. 575–577, 579, 582, 585–586, 589–591, 602–604; 87 Cong. Rec. 886–893, 895–898; 88 Cong. Rec. 2283, 2286, 2292, 2296; 89 Cong. Rec. 797, 798, 806, 809; 92 Cong. Rec. 5210, 5211, 5214–5215; 94 Cong. Rec. 2405–2409; 96 Cong. Rec. 3941–3944; 97 Cong. Rec. 1156–1159; 99 Cong. Rec. 1359–1361; 100 Cong. Rec. 2282–2286, 2288–2290, 2292–2293), and that the investigation was intended to extend to Communism wherever it existed.[27]

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[26] H. Res. 168, 79th Cong., 1st sess., 91 Cong. Rec. 1856, 1857 (providing for expenditures up to $50,000); H. Res. 624, 79th Cong., 2d sess., 92 Cong. Rec. 5209, 5224 (providing for further expenses up to $75,000); H. Res. 77, 80th Cong., 1st sess., 93 Cong. Rec. 699, 700 ($50,000); H. Res. 152, 80th Cong., 1st sess., 93 Cong. Rec. 3074 ($50,000); H. Res. 484, 80th Cong., 2d sess., 94 Cong. Rec. 2405, 2414 ($200,000); H. Res. 78, 81st Cong., 1st sess., 95 Cong. Rec. 1044, 1045 ($200,000); H. Res. 482, 81st Cong., 2d sess., 96 Cong. Rec. 3941, 3944 ($150,000); H. Res. 42, 82d Cong., 1st sess., 97 Cong. Rec. 1155, 1160 ($200,000); H. Res. 403, 82d Cong., 1st sess., 97 Cong. Rec. 12288 ($100,000); H. Res. 526, 82d Cong., 2d sess., 98 Cong. Rec. 2646 ($200,000); H. Res. 119, 83d Cong., 1st sess., 99 Cong. Rec. 1358–9, 1361–2 ($300,000); H. Res. 400, 83d Cong., 2d sess., 100 Cong. Rec. 2282, 2293–4 ($275,000). The vote for the appropriation in each instance was overwhelming.

[27] That an investigation into Communism was intended by Congress is also evidenced by the numerous recommendations of the Committee, over a period of years, specifically dealing

It is submitted, therefore, in the light of this "persuasive gloss of legislative history" (*United States* v. *Witkovich*, 353 U. S. 194, 199), that, however valid on the grounds of vagueness may be criticism of the Committee's authorizing resolution as authority for an inquiry into *other* fields or subjects, it is not open to such attack in this case.[28] The resolution, in other words, clearly authorized the Committee to inquire into the subject of Communism and Communist activities. To that extent, at the least, it cannot be said that there was "an absence of authority for any investigation" (Pet. Br. 21).

II.

The Committee was authorized to conduct by compulsory process an investigation of communism in the field of education

Petitioner next contends (Pet. 10–11; Pet. Br. 25–27) that the House of Representatives "did not authorize the Committee to conduct by compulsory proc-

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with Communism, and the subsequent action taken by Congress pursuant to such recommendations. See *Legislative Recommendations by House Committee on Un-American Activities; Subsequent Action Taken by Congress or Executive Agencies (A Research Study by Legislative Reference Service of the Library of Congress)*, Committee on Un-American Activities, House of Representatives, 85th Cong., 2d sess., June 1958, pp. 6–9, 11–24. See also footnote 57, *infra*, pp. 75–76.

[28] Just as a statute may be valid as applied to one set of facts and invalid as applied to another (*Federation of Labor* v. *McAdory*, 325 U. S. 450, 462; *Kansas City Southern Ry. Co.* v. *Anderson*, 233 U. S. 325; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Wynne*, 224 U. S. 354, 361; *Poindexter v. Greenhow*, 114 U. S. 270, 295), a resolution might be deemed objectionably vague as a source of authority for an investigation into certain areas but not as to others, which come clearly within its intended scope.

ess an investigation in the field of education" (Pet. Br. 25). Assuming (according to the argument) that *Watkins* did not hold the Committee's authorizing resolution to be totally invalid, that decision, when read together with *Sweezy* v. *New Hampshire*, 354 U. S. 234 (decided the same day as *Watkins*), establishes at least that the resolution did not authorize the Committee to inquire into "the field of education" (Pet. 10; Pet. Br. 25–26). The argument at this point is not that such an inquiry would be unconstitutional and thus beyond the power of the House to authorize its Committee to conduct. The contention, rather, is that the House never in fact authorized such an inquiry. For, according to petitioner, "[c]onsidering that an investigation of education * * * involves an area of particular significance under the First Amendment," it "can hardly be assumed" that the House "intended the Committee to invade this field" (Pet. Br. 26).

This contention, which has the support of all of the dissenting judges below (R. 305–306, 306–307),[29] is, we submit, untenable in the light of the Committee's his-

[29] The dissent of Judges Fahy and Washington was based on this ground alone (R. 306–307), they being of the view that it was "unnecessary here to go into the question whether *Watkins* holds the Committee to be without authority to compel testimony on any subject of inquiry" (R. 307). Judges Edgerton and Bazelon based their dissent primarily on the latter ground, *i. e.*, that the Committee's charter is wholly invalid as an authorization to compel testimony on any subject whatever (R. 304–305), but in addition expressed the view that reversal was in any event required on the narrower ground on which Judges Fahy and Washington rested their dissent (R. 305–306).

tory. The House of Representatives, having authorized its Committee on Un-American Activities to conduct inquiries into the general field of Communism, did not intend to carve out from that area Communism in education; on the contrary, it was the wish and intent of the House (as we have seen, *supra*, pp. 34–38) that the Committee extend its investigation into every area of the national interest upon which Communism has an impact. No exception was made for education. Our argument is not based merely upon a negative inference from the fact that the field of education is not excepted in the Committee's broad charter; there is strong positive evidence that the House specifically intended the Committee to pursue its inquiries into this field.

A. This Court's *Sweezy* decision does not require that the Committee's charter should be construed as excepting the field of education from the reach of the Committee's processes

Petitioner's view is that the *Watkins* decision, taken together with *Sweezy* v. *New Hampshire*, 354 U. S. 234, establishes at least that the Committee's charter did not authorize it to inquire into "the field of education" (Pet. 10; Pet. Br. 25–26). We submit, however, that *Sweezy* is distinguishable from this case in at least two decisive respects.

In the first place, the basic difficulty which the principal opinion in the *Sweezy* case[30] found with that conviction was that it was for refusing to answer questions by a committee of one man (the New

[30] *I. e.*, the opinion of Chief Justice Warren, in which Mr. Justice Black, Mr. Justice Douglas, and Mr. Justice Brennan joined.

Hampshire Attorney General), to whom the New Hampshire Legislature had delegated total and uncontrolled responsibility for conducting the inquiry which it had authorized, and for seeing to it that only such information as the Legislature desired, and nothing more, be sought through the use of the subpoena power (354 U. S. at 251–255).[21] Petitioner's conviction is not vulnerable to this criticism. Here, unlike *Sweezy*, the House of Representatives retained at all times responsibility for the actions of its Com-

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[21] In *Sweezy*, the New Hampshire Legislature authorized the State Attorney General, as a one-man legislative committee, to conduct an investigation to determine whether "subversive" persons (as defined by statute) were located in the State. The Attorney General was authorized to act on his own motion and on such information as in his judgment was reasonable or reliable. He was given the power of subpoena, but not the power to hold witnesses in contempt. Pursuant to this authorization, the Attorney General summoned Sweezy, interrogated him on various subjects, and, upon Sweezy's refusal to answer certain questions, filed a petition in the Superior Court of Merrimack County asking that the court propound the questions to the witness. The court, deeming the questions pertinent, summoned Sweezy as a witness, and, on his continued refusal to answer, adjudged him in contempt. The Legislature had no part in the process save for its initial general authorization to the Attorney General to conduct an investigation. (354 U. S. at 236–245)

Thus, as the principal opinion observed (354 U. S. at 254):

"* * * neither we nor the state courts have any assurance that the questions petitioner refused to answer fall into a category of matters upon which the legislature wanted to be informed when it initiated this inquiry. The judiciary are thus placed in an untenable position. Lacking even the elementary fact that the legislature wants certain questions answered and recognizing that petitioner's constitutional rights are in jeopardy, we are asked to approve or disapprove his incarceration for contempt."

mittee, which could only report to its parent body and recommend action with respect to recalcitrant witnesses. Here, also unlike *Sweezy* (see fn. 31, *supra*, p. 41), the House itself cited petitioner for contempt and referred his case to the United States Attorney for prosecution. It took this action, furthermore, only after being fully apprised, through a documented committee report, of the circumstances surrounding the calling of petitioner as a witness, the nature of the inquiry in which the Committee was engaged, and the exact questions which he refused to answer. See *supra*, pp. 21–22, and *infra*, pp. 52–53.

Secondly, while the New Hampshire Attorney General's interrogation of Sweezy touched upon some of the philosophic aspects of Communism as an abstract body of thought—such as, for example, whether or not he advocated "Marxism" or espoused the theory of "dialectical materialism" (see 354 U. S. at 243–244)—the questions which he was convicted for refusing to answer related primarily to his connections and associations, not with the Communist Party, but with the *Progressive* Party, and persons with whom he was acquainted in that organization (see 354 U. S. at 239–244).[32] This is the aspect of the *Sweezy* case which

[32] The principal opinion points out that it was not clear from the record whether the New Hampshire Supreme Court, in affirming Sweezy's conviction, intended to include a question about Sweezy's "belief in Communism" among the questions with respect to which it affirmed, but that it was unnecessary, in the view which the Justices joining in that opinion took, to "resolve affirmatively" that that particular question "was or was not included in the decision by the State Supreme Court" (354 U. S. at 245).

was decisive for Justices Frankfurter and Harlan (see 354 U. S. at 264–267).[33] The Committee's inquiry in the case at bar, on the other hand, was concerned with the *Communist* Party's infiltration and penetration of the field of education, and the questions asked of petitioner were limited to his participation, as a graduate university student and teaching fellow, in Communist Party activities.[34]

This distinction between the Communist Party and the Progressive Party is vital. Whatever view one may have as to the character of the Progressive Party

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[33] Mr. Justice Frankfurter, after pointing out that Sweezy stated, in response to questions at the hearing, that he "did not know of any Communist interest in, connection with, influence over, activity in, or manipulation of the Progressive Party" (354 U. S. at 264), observed that (at 266):

"* * * Whatever, on the basis of massive proof and in the light of history, of which this Court may well take judicial notice, be the justification for not regarding the Communist Party as a conventional political party, no such justification has been afforded in regard to the Progressive Party. A foundation in fact and reason would have to be established far weightier than the intimations that appear in the record to warrant such a view of the Progressive Party. [Footnote reference omitted] This precludes the questioning that petitioner resisted in regard to that Party."

[34] Unlike the situation with respect to Sweezy, moreover, the questions petitioner refused to answer did not relate to teaching or the contents of classes. *Cf.* the following observation of the court below: "The inevitable result is that the purpose and nature of the inquiry was to determine *communist methods of infiltration* in the field of education. There is no indication of a congressional desire or attempt to examine curricula, content of text books, administration of schools, or criteria for employing and discharging teachers. Indeed, the committee's official report on this investigation negatives any such interpretation of the intent of Congress." (R. 281; emphasis added.)

as a legitimate political party, the Congress has the gravest of reasons for *not* considering the Communist Party as a conventional political party. "From information before its several Committees and from facts of general knowledge, Congress could rationally conclude that, behind its political party façade, the Communist Party is a conspiratorial and revolutionary junta, organized to reach ends and to use methods which are incompatible with our constitutional system." *American Communications Assn.* v. *Douds*, 339 U. S. 382, 424.[35] Its goal is *"to seize powers of government by and for a minority rather than to acquire power through the vote of a free electorate"* (*id.*, 425; italics in the original). It "purposes forcibly to recast our whole social and political structure after the Muscovite model of police-state dictatorship" (*ibid.*). It is "designed to undo the Declaration of Independence, the Constitution, and our Bill of Rights, and overturn our system of free, representative self-government" (*ibid.*). *"Violent and undemocratic means are the calculated and indispensable methods to attain [its] goal"* (339 U. S. at 429; italics in the original). It is "a secret conclave. Members are admitted only upon acceptance as reliable and after indoctrination in its policies, to which the member is fully committed" (at 432). Each member "pledges unconditional obedience to party authority.

[35] This and the quotations which follow are from the separate opinion of Mr. Justice Jackson, concurring in part and dissenting in part. The several quotations reflect what, in the Justice's view, the Congress could reasonably believe about the Communist Party, based upon evidence adduced before it and its committees (see 339 U. S. at 424, fn. 2).

Adherents are known by secret or code names. They constitute 'cells' in the factory, the office, the political society, or the labor union. For any deviation from the party line they are purged and excluded" (*ibid.*). It, moreover, *"alone among American parties past or present is dominated and controlled by a foreign government.* It is a satrap party which, to the threat of civil disorder, adds the threat of betrayal into alien hands" (at 427; italics in the original). See also Mr. Justice Frankfurter's reference (quoted in footnote 33, *supra*, p. 43) to the "massive proof" justifying "not regarding the Communist Party as a conventional political party." And compare *Dennis* v. *United States*, 341 U. S. 494, 563–566 (Mr. Justice Jackson, concurring); *infra*, pp. 55–61, 85–86.[36]

For these reasons, it is submitted that *Sweezy* is decisively distinguishable from the case at bar.

B. The House has affirmatively indicated that inquiry into Communism in education is within the Committee's charter

There is strong affirmative proof that the House of Representatives did not intend the Committee's inquiries to stop short of a proper inquiry into the extent of Communist infiltration into education.

1. Congress, at the time of petitioner's appearance,

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[36] See also *Osman* v. *Douds*, 339 U. S. 846; *Galvan* v. *Press*, 347 U. S. 522; *Harisiades* v. *Shaughnessy*, 342 U. S. 580; *Carlson* v. *Landon*, 342 U. S. 524; *Adler* v. *Board of Education*, 342 U. S. 485; *Garner* v. *Los Angeles Board*, 341 U. S. 716; *Lerner* v. *Casey*, 357 U. S. 468, 477–478; *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531 (C. A. D. C.), reversed on other grounds, 351 U. S. 115; *United States* v. *Dennis*, 183 F. 2d 201, 206, 212-213 (C. A. 2), affirmed, 341 U. S. 494; Internal Security Act of 1950, c. 1024, Section 2, 64 Stat. 987, 50 U. S. C. 781; Communist Control Act of 1954, c. 886, Section 2, 68 Stat. 775, 50 U. S. C. (Supp. V) 841.

had already taken action in accordance with the findings of the Committee in this area. Thus, as noted by the Court of Appeals in this case (R. 282), Congress, in 1952, pursuant to the Committee's recommendation that it should "[w]ithhold all Federal financial support from any educational institution which permits members of its faculty to advocate communism, fascism, or nazism as a substitute for our form of government to the student body * * *," enacted Section 228 of the Veterans' Readjustment Assistance Act, 66 Stat. 667, 38 U. S. C. 933 (G. Ex. 9, pp. 144–5; R. 260–261). This section prohibits the payment by the Veterans Administration of any educational and training allowance to any otherwise eligible veteran who enrolls for any course in any educational institution which is listed by the Attorney General as totalitarian, Fascist, Communist, or subversive. See *infra*, pp. 64–65.

Moreover, even had there been no such affirmative action, it would be only reasonable to assume that Congress intended its committees' inquiries into Communism and Communist infiltration of various areas of the national life to extend, properly conducted, to the area of education. For, as the Court of Appeals also points out (R. 282), "American colleges and universities are holders of contracts with the Government to conduct a variety of research projects of far-reaching consequence to the national security." [37]

[37] See *infra*, pp. 66, 101–102, for statistics as to such research contracts, and pp. 62–66, 95–102, *infra*, for a discussion of other bases of a legitimate congressional concern with the problem of Communism in the field of education.

2. The House, in 1953, overwhelmingly voted funds to finance the Committee's work with full knowledge that the Committee had recently commenced an inquiry into Communism in education and was about to continue the inquiry. On February 24, 1953, the House, following an extended debate on the House floor in the course of which it was brought out that the Committee had recently commenced an inquiry into Communism in education and was about to resume it on a nation-wide scale, voted funds to the Committee. The date of this action has special significance in that it occurred a very short time (less than two months) following the House's most recent renewal of the Committee's charter,[38] and was on the literal eve of the commencement by the Committee, on February 25, 1953, of the series of public hearings which it held in connection with its investigation into Communism in education (*supra*, p. 7)—of which its interrogation of petitioner, some 16 months later (in June 1954), was an integral part (*supra*, pp. 17–21).

The occasion of the floor discussion was House Resolution 119, 83d Cong., 1st sess., which proposed that funds in an amount not to exceed $300,000 be appropriated to finance the current activities of the Committee (99 Cong. Rec. 1358–1359). Following the reading of the resolution by the Clerk, Representative Holifield inquired whether, "in view of the contro-

[38] This had occurred on January 3, 1953, at the beginning of the 83d Congress (*supra*, pp. 3–4).

versy that has arisen in regard to going into universities and colleges throughout the land and investigating them as to communism," it was "the purpose of this committee to use these funds for the purposes of going into the different college towns throughout the United States and calling public hearings and asking members of the faculty or of the local boards of regents and trustees to come before the committee and answer questions in a public way in regard to some alleged subversive activity" (99 Cong. Rec. 1359). Representative Halleck replied that it seemed to him "strange that every time the Committee on Un-American Activities starts out to ferret out Communists in this country a lot of people get disturbed about it" (*ibid.*). "I am as solicitous of the welfare of colleges and universities as anybody," Representative Halleck added, "but at the same time I think the House Committee on Un-American Activities has proved its worth" (*ibid.*).

Representative Kearney, the ranking majority member of the Committee present, said that he thought Representative Holifield was "going far afield in his ideas of what the Committee on Un-American Activities intends to do with reference to the investigation of communism in educational institutions," and added that the Committee intended to pursue its inquiries into communism "no matter where it be" (*ibid.*). Representative Walter, another member of the Committee, after further colloquy, said that he thought Representative Holifield "would be satisfied if he knew that there will be no witnesses called before that committee in its investigation of communism in

education except people that we know are now or have been Communists" (*ibid.*).

Following further colloquy, Representative Jackson, another Committee member, after reviewing some of the recent work of the Committee, said (99 Cong. Rec. 1360):

> So far as education is concerned, if the American educators, and if the gentlemen who are objecting to the investigation of communism and Communists in education, will recognize a valid distinction, I want to point out this is not a blunderbuss approach to the problem of communism in education. We are not interested in textbooks. We are not interested in the classroom operations of the universities. We are interested instead in finding out who the Communists are and what they are doing to further the Communist conspiracy. I may say in that connection that we have sworn testimony identifying individuals presently on the campuses of this country, men who have been identified under oath as one-time members of the Communist Party. Is there any Member of this body who would say we should not investigate this situation?

Representative Holifield replied that if "known Communists * * * exist[ed] in any of these schools," he thought it "entirely proper that they be brought before the committee and investigated" (*ibid.*). His only concern, he said, was that the Committee not "go into these college towns and investigate indiscriminately" (*ibid.*).

Representative Kearney then told the House that

the Committee had in the preceding week "heard three educators," "former members of the Communist Party," who had told the Committee that in their opinion "a Communist educator cannot be an objective pedagogue" and "is a menace to the educational system of this country" (*ibid.*). "We agree with that," Representative Kearney added, "and we are going to find the Communists in education and elsewhere throughout this country, if this body will go along and give us the funds we need to do the job" (*ibid.*).

Following further discussion (99 Cong. Rec. 1360–1361)—during which Representative Doyle, a fourth member of the Committee, reiterated the Committee's intention of pursuing its investigation of Communism into the field of education pursuant to its "assignment * * * to investigate subversive people and programs wherever they exist" (99 *id.* 1361)—a vote was taken on the resolution, which was overwhelmingly approved (99 *id.* 1361–1362).[39]

It is evident from this history that there is no basis whatever for the contention that the House never intended to authorize the Committee to carry its inquiries into Communism into the field of education. That the House did so authorize its Committee could not, we believe, be evidenced more plainly, short of an explicit authorization to that effect in the Committee's charter. The showing on this point, it should also be noted, does not consist merely of a "squeez[ing]" of "implied authority"

[39] The vote was 315 to 2, with 2 voting "present" and 113 not voting.

out of "repeated acquiescence by Congress in the Committee's inquiries" in this field (*Watkins* v. *United States*, 354 U. S. 178, 217 (Mr. Justice Frankfurter, concurring)). Rather, it is a showing of explicit authorization by the voting of funds to enable the Committee to pursue its investigations, following a full floor debate in the course of which the Committee's intention to extend its inquiries into the educational field was iterated and reiterated, and the desirability of such course extensively discussed.

3. Pursuant to its announced intention, the Committee, during the next several months of 1953, conducted an extensive series of hearings—which were in the main public and in the course of which it heard in excess of thirty witnesses from different colleges and universities throughout the country—on the subject of Communism in education.[40] On February 6, 1954, the Committee, in its annual report for the year 1953, made a full and detailed report to the House of its activities during the preceding year in connection with its investigation into, among other subjects, "Communist Methods of Infiltration (Education)."[41] Within three weeks thereafter, on February 25, 1954, the matter of funds for financing the Committee's work was again debated

[40] See Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., on *Communist Methods of Infiltration (Education)*, Parts 1–8.

[41] See Annual Report of the Committee on Un-American Activities for the Year 1953 (H. Rept. No. 1192, 83d Cong., 2d sess.), pp. 8–22. This report was received in evidence as Government Exhibit 9, and pertinent parts of it appear in the printed record at R. 241–261.

on the House floor (100 Cong. Rec. 2282–2294). Following extensive discussion, in the course of which Representative Velde, the Committee Chairman, reported on the work of the Committee during the preceding year (100 *id.* 2283–2284)—including its inquiry into Communism in "education" (100 *id.* 2284)—the House again voted the Committee substantial funds ($275,000) with which to carry on its work, the vote being again by an overwhelming margin (100 *id.* 2293–2294).[42]

4. Since the Committee's 1953–54 inquiry into Communism in education involved in this case, the House has twice renewed the Committee's charter—in January 1955 at the beginning of the 84th Congress (101 Cong. Rec. 11) and in January 1957 at the beginning of the 85th Congress (103 Cong. Rec. 47)—without on either occasion amending the charter so as to repudiate the Committee's interpretation of it as authorizing the inclusion of education within the scope of the Committee's investigative activities.

5. The very act of the House in citing petitioner for contempt, finally, constituted ratification by that body of the Committee's interpretation of its charter as authorizing it to pursue its inquiries into the field of education. For, as we have pointed out (*supra*, pp. 21–22), the Committee report reporting petitioner's contumacy to the House set forth in full the details of petitioner's defiance of the Committee, including the exact questions which he refused to answer and the context in which they were propounded. The House

[42] The vote was 364 to 1, with 4 voting "present" and 65 not voting.

was thus fully aware that the inquiry at which petitioner's recusancy occurred was an investigation of Communism in education. In voting to cite petitioner for contempt, the House again implicitly approved and ratified the Committee's own interpretation of the scope of its authorizing resolution.

III.

Petitioner had no right under the First Amendment to refuse to tell the Committee whether he was a member of the Communist Party

It is next argued (Pet. Br. 27–60) that "[t]he Committee's authority as here applied, to force petitioner to answer the questions recited in the indictment, violates the First Amendment" (Pet. Br. 27).[43] We submit that there is likewise no merit to this constitutional contention.

It should first be observed, in this connection, that petitioner virtually ignores the questions underlying the first two counts of the indictment—*i. e.*, whether he then was or ever had been a member of the Communist Party (R. 2)—and discusses the issues almost as if the only question on which the indictment was based was that underlying the fourth count, *i. e.*, whether he was, while at the University of Michigan, a member of the "Haldane Club of the Communist Party" (see Pet. Br. 28–29, 41–42, 54, 55, 56–57) (which he describes as a mere "'intellectual group, discussion group' of 8 or 10 graduate students" (Pet. Br. 28–29)). It is to be emphasized, however, (a) that the "Haldane Club" was a club *of the Commu-*

[43] As we have seen (*supra*, pp. 19–20), petitioner specifically disclaimed reliance on his Fifth Amendment privilege against self-incrimination (R. 224–226, 240).

nist Party"—an integral organizational unit of the Communist Party itself and not a mere campus club or group in which any graduate student was eligible for membership, Communists and non-Communists alike (see R. 203–204, 205, 209, 210, 216–217),[45] and (b) that, since petitioner received a general sentence on all counts of the indictment (R. 67), it is sufficient, to sustain this sentence, to uphold his conviction on any one of the counts. *Claassen* v. *United States*, 142 U. S. 140, 146–147; cf. *Hirabayashi* v. *United States*, 320 U. S. 81, 85, 105; *Pinkerton* v. *United States*, 328 U. S. 640, 641–642, n. 1; *United States* v. *Trenton Potteries*, 273 U. S. 392, 401–402. In short, for petitioner to prevail it is necessary for him to show, not merely that one or some of the questions underlying the indictment were improper,[46] but that all were improper. He must show that the Committee had no right to

[44] It is necessary to emphasize this because petitioner, after an initial reference to the club as "'The Haldane Club' of the Communist Party" (Pet. Br. 28), thereafter, omitting the qualifying phrase, speaks simply of the "Haldane Club" (Pet. Br. 29, 41, 54, 55).

[45] Crowley testified that the Haldane Club was "even more secret" than the "Neafus Club"—the latter being another Communist Party organization on the campus, open to those Party members who were undergraduates (see *supra*, pp. 17–18).

[46] We believe that all five of the questions underlying the indictment (see *supra*, p. 5) were proper as relevant to the Committee's inquiry into Communism in education. With respect to the fifth question, relating to petitioner's membership in the "University of Michigan Council of Arts, Sciences, and Professions" (R. 2, 238), see fn. 18, *supra*, p. 19. However, for the reasons stated in the text, it is unnecessary to consider the propriety of any of the questions except those relating to petitioner's past and present membership in the Communist Party.

compel him to divulge whether he then was or ever had been *a member of the Communist Party.*

A. A witness before a congressional committee conducting a proper inquiry into the nature and extent of Communist infiltration into an area with which Congress has a legitimate legislative concern has no right under the First Amendment to refuse to disclose whether he is or has been a member of the Communist Party

I. It certainly cannot be denied (as we pointed out in our brief in the *Watkins* case, No. 261, Oct. Term, 1956, p. 61; and see *id.*, pp. 61–64)—and petitioner does not appear to question—that Congress has general power to inquire into, and to legislate within its sphere with respect to, the subjects of Communism and the Communist Party. See, *e. g.*, *American Communications Assn.* v. *Douds*, 339 U. S. 382; *Osman* v. *Douds*, 339 U. S. 846; *Garner* v. *Los Angeles Board*, 341 U. S. 716; *Galvan* v. *Press*, 347 U. S. 522; *Harisiades* v. *Shaughnessy*, 342 U. S. 580; *Carlson* v. *Landon*, 342 U. S. 524; *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531 (C. A. D. C.), reversed on other grounds, 351 U. S. 115; *Dennis* v. *United States*, 341 U. S. 494; *Adler* v. *Board of Education*, 342 U. S. 485; *Lerner* v. *Casey*, 357 U. S. 468, 477–478.

This is not to say, as recognized by the court below (R. 285), that Congress has any "general power to inquire into political beliefs and associations." But it clearly does have the power to inquire into the nature, character, and activities of, the seriousness of the danger emanating from, and other aspects (including the number and identity of its members) of the particular organization known as the Communist Party of the United States. This is because there is—at the very least—the strongest reason to believe

that that organization, dominated and controlled by a foreign power, seeks, under the cloak and style of a domestic political party, to subvert and destroy the American form of government by force and violence and other unconstitutional means. See Mr. Justice Jackson's observations with respect to the Communist Party in his opinion in *American Communications Assn.* v. *Douds*, 339 U. S. 382, 424–433, excerpts from which are quoted at pp. 44–45, *supra*, and the same Justice's concurring opinion in *Dennis* v. *United States*, 341 U. S. 494, 562–566; see also Judge Learned Hand's remarks concerning the Party in his opinion for the Second Circuit in the *Dennis* case, 183 F. 2d 201, 206, 212–213, affirmed, 341 U. S. 494; cf. *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531, 562–573 (C. A. D. C.), reversed on other grounds, 351 U. S. 115; and see Internal Security Act of 1950, c. 1024, § 2, 64 Stat. 987, 50 U. S. C. 781; Communist Control Act of 1954, c. 886, § 2, 68 Stat. 775, 50 U. S. C. (Supp. V) 841.

In the latter Act—enacted less than two months following petitioner's appearance before the Committee in this case—Congress epitomized its reasons for not considering the Communist Party as simply "another political party." The pertinent passage of the Act sets forth so forcefully the reasons why Congress is justified in inquiring, through its properly constituted committees, into this organization's composition and activities that we quote it in full:

> The Congress finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact

an instrumentality of a conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement. Its members have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination with respect to its objectives and methods, and are organized, instructed, and disciplined to carry into action slavishly the assignments given them by their hierarchical chieftains. Unlike political parties, the Communist Party acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members. The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any

> available means, including resort to force and violence. Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services. * * *

This formal expression by the Congress of its views respecting the Communist Party is manifestly entitled to great weight in any judicial appraisal of the validity, under the First Amendment, of a congressional committee's inquiry, in a proper investigation into the impact of Communism on a significant area of the national life, whether the witness (admittedly an individual who has been closely associated and identified with that area) is or has been a member of the Party.

The special nature of the Communist Party, the special dangers it represents, and its special and unlawful aims, justify inquiry into an individual's connection with that Party where other political queries would be inadmissible. This principle the Court has explicitly recognized. *Lerner* v. *Casey*, 357 U. S. 468, 477–478, and the other cases cited, *supra*, p. 55; see also the discussion of academic freedom, *infra*, pp. 82–86. It is too late in the twentieth century to treat Communist Party membership as if it were of the same type and order as membership in the Republican Party, Democratic Party, or the Socialist Party. The established fact is that Communist Party membership

is on a wholly different plane because the Communist Party is wholly different—and this Court has never held otherwise.

In particular, the Court has never held that Communist Party membership must always be equated with a normal political association, unless and until the Government proves a close connection between the particular individual and the advocacy of force and violence or other unlawful conduct. In criminal cases arising under the Smith Act, the Court has laid down stringent standards of individual guilt (*Yates* v. *United States,* 354 U. S. 298), but in the non-criminal field it has held that (in appropriate circumstances) knowing Communist Party membership can be sufficient, in and of itself, to warrant adverse governmental action. See the *Douds, Garner, Carlson, Galvan,* and *Lerner* decisions, *supra,* p. 55. At least where the consequences are not punitive, the Court has accepted conscious Party membership as itself a danger signal—justifying investigation, administrative sanctions, or other special treatment. The Communist Party is marked off from other groups by its unique character, unlawful objectives, and domination by a foreign power.

2. It is for these reasons that the lower courts have correctly upheld the power of Congress, in proper cases, to inquire whether a witness is or has been a member of the Communist Party. Congress cannot determine the impact of the Communist Party in a particular institution or area without discovering what and how many Communists were active there, and the activities they undertook.

"If Congress has power to inquire into the subjects of Communism and the Communist Party," as was said in *Barsky* v. *United States,* 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843—

> * * * it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. *Personnel is part of the subject.* [Emphasis added.]

See also *Lawson* v. *United States,* 176 F. 2d 49, 52–53 C. A. D. C.), certiorari denied, 339 U. S. 934; *United States* v. *Josephson,* 165 F. 2d 82, 90–92 (C. A. 2), certiorari denied, 333 U. S. 838; *Eisler* v. *United States,* 170 F. 2d 273 (C. A. D. C.), certiorari dismissed, 338 U. S. 883; *Marshall* v. *United States,* 176 F. 2d 473 (C. A. D. C.), certiorari denied, 339 U. S. 933; *Dennis* v. *United States,* 171 F. 2d 986 (C. A. D. C.), affirmed on other grounds, 339 U. S. 162; *Sacher* v. *United States,* 252 F. 2d 828 (C. A. D. C.), reversed on other grounds, 356 U. S. 576.

Accepting the premise that compelled disclosure of affiliations may well inhibit or affect the open expression of views (cf. *National Association for the Advancement of Colored People* v. *Alabama,* 357 U. S. 449, 460–463), these decisions properly find that the balance weighs in favor of disclosure of Communist Party membership where Congress has a legitimate interest. On the one hand, the Party member's inhibited speech is, at least in substantial part, unlawful and unprotected by the Constitution, and to the

extent constitutionally protected it is often of a low order of value (*e. g.*, devious support of a foreign power against the interests of this country); moreover, the Party engages in *activities* (apart from the communication of unlawful ideas) leading to disruptive consequences detrimental to the body politic (*e. g.*, political strikes), and therefore unworthy of constitutional protection. On the other hand, the governmental interest in discovering Communist infiltration in significant American institutions is an important one; the discovery of these disruptive activities is both necessary and proper. See also *infra*, pp. 80–86, and the Brief for the United States in *Flaxer* v. *United States*, No. 60, this Term, at p. 45 *ff.*

B. The Committee had a valid legislative purpose in interrogating petitioner which outweighed his interest in non-disclosure

It remains to show that the Committee had a valid legislative purpose in questioning this petitioner, which outweighed any interest in keeping his possible Party membership undisclosed. *First*, we discuss Congress's legitimate interest in the problem of Communist infiltration in education. *Second*, we point out that petitioner's interrogation was properly connected with such an inquiry into Communist infiltration. *Third*, we show further that any interest in favor of non-disclosure is subordinate to the interests calling for answers by petitioner to the queries.

1. Congress has a legitimate interest in the problem of Communist infiltration of the field of education

That Congress had during the pertinent period (1953–54)—and of course still has—a vital and continuing interest in, and legitimate legislative concern

with, the problem of Communist infiltration in the field of education cannot, we submit, be denied. While education is a matter primarily of State and local concern, the long history in this country of federal enactments directly or indirectly subsidizing education at all levels shows that this subject is also a matter of vital concern to the Federal Government."

A brief survey of some of the more significant of the federal programs having an impact on the field of education—involving the annual expenditure of millions of dollars of federal funds, and directly affecting the nation's colleges and universities—will emphasize, we think, the magnitude of the congressional interest in this area. It will also make clear why it has been and continues to be a matter of grave concern to the Congress and its committees, particularly the House Committee on Un-American Activities, to be thoroughly informed with respect to whether and to what extent the faculties and administrative staffs of these institutions have been penetrated by persons who are members and subject to the discipline of the Communist Party. For brevity's sake, and because petitioner's teaching background has been at the college and university level, we limit our presentation mainly to those federal programs and expenditures primarily affecting the nation's colleges

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[47] The National Defense Education Act of 1958 (Public Law 85-864, approved September 2, 1958), authorizing substantial Federal expenditures in a broad program designed to strengthen the nation's educational system, particularly as regards the teaching of mathematics, the sciences, and modern foreign languages, is merely the latest, as will be seen, in a long series of federal enactments affecting the field of education.

and universities, and omit reference to the numerous programs and expenditures whose primary impact on education is at lower levels.[48]

Land-grant colleges and universities:[49] Each year, Congress appropriates large sums to the land-grant colleges and universities; in 1954–1955 and 1955–1956, these sums amounted to over five million dollars.

The off-duty education program for personnel of the armed forces on active duty; the tuition aid program: The United States Armed Forces Institute (USAFI) offers correspondence courses in a number of participating institutions to personnel of the armed services; and under the Tuition Aid Program servicemen enroll for off-duty courses, with the Government paying a large portion of the tuition.

The ROTC programs and the Navy Five Term College Program: The long-established ROTC programs of the armed services are well-known; the Navy also has a college program for officers with less than two years of college training.

The educational-assistance programs for World War II and Korean veterans: Under the Servicemen's Readjustment Act of 1944, 58 Stat. 284, and the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 663, the Federal Government subsidized

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[48] For an informative study of the details of Federal programs and expenditures affecting all levels of education, see Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education 1954–55 and 1955–56* (1956), *passim*.

[49] In the Appendix, *infra*, pp. 95–102, we set out in greater detail the facts relating to the Federal Government's interest in, and aid to, each of the categories named in the text.

studies by very large numbers of veterans of World War II and the Korean hostilities. In the 1953–1954 school year, some 12,500 institutions of all types were involved in this program. From the program's beginning through the 1954–1955 school year, a total of some seventeen billion dollars was expended by the Federal Government.

It is significant that the 1952 Act incorporates the substance of one of the specific legislative recommendations of the House Committee on Un-American Activities. See R. 260–261. That Committee had recommended, in its report to the House of January 3, 1941, that Congress should "[w]ithhold all Federal financial support from any educational institution which permits members of its faculty to advocate communism, fascism, or nazism as a substitute for our form of government to the student body of these educational institutions" (Legislative Recommendation No. 4, contained in H. Rept. No. 1, 77th Cong., 1st sess., p. 23; set forth in pertinent part at R. 260). Section 228 of the Veterans' Readjustment Assistance Act of 1952 (66 Stat. 667; 38 U. S. C. 983) provided that "[t]he Administrator [of Veterans' Affairs] shall not approve the enrollment of, or payment of an education and training allowance to, any eligible veteran in any course in an educational institution or training establishment while it is listed by the Attorney General under section 3 of part III of Executive Order 9835, as amended." The cited section of Executive Order 9835 (12 F. R. 1938)—since

superseded—required the Department of Justice to keep the Loyalty Review Board (under the former loyalty-security program for government employees) currently furnished with the names of foreign or domestic organizations, associations, or groups of persons which the Attorney General, after appropriate investigation and determination, designated as "totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means."

The State Department's educational exchange programs: The State Department conducts the International Educational Exchange program (providing for exchanges with foreign students, etc.) and the program of Inter-University Contracts (aid by American universities to foreign institutions).

Income tax deductions for contributions to colleges and universities: The Internal Revenue Code authorizes deductions for contributions to educational institutions. This provision constitutes an indirect federal subsidization of these educational institutions in a sum amounting annually to many millions of dollars. It is of course within the power of Congress to limit this subsidy by amendatory legislation. This clause of the tax laws is thus another important basis of congressional interest in the problem of the infiltration of the teaching staffs of the institutions sub-

sidized by persons who are under the discipline of the Communist Party.[50]

University research programs under government contracts: For some years, the Federal Government has contracted widely for the use of research facilities of American colleges and universities. Among the main agencies making such contracts are the Department of Defense, the Atomic Energy Commission, and the National Science Foundation; in recent years, their annual contracts have amounted to over $150,000,000.

The significance of these Government-subsidized research programs in measuring the extent of Congress' legitimate concern with the problem of Communism in education is clear, and was specifically noted by the Court of Appeals in this case. "American colleges and universities," the court observed, "are holders of contracts with the Government to conduct a variety of research projects of far-reaching consequence to the national security" (R. 282). It would be intolerable, for example, for research personnel at a university engaged in an atomic research study under a government contract, if their work required that they be made privy to classified information, to

[50] Cf. Section 11 (a) of the Internal Security Act of 1950 (50 U. S. C. 790 (a)), providing that, "[n]otwithstanding any other provision of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under [the Act as a Communist-action or Communist-front organization], or (2) there is in effect a final order of the [Subversive Activities Control] Board requiring such organization to register under [the Act as such an organization]."

be permitted to undertake their studies without security clearance. Congress, through its committees, has an interest in inquiring into whether universities having such government research contracts have Communist Party members on their research staffs and to what extent the clearance procedures are effective.

In this connection, it is significant that one of the witnesses who appeared before the House Un-American Activities Committee during the same series of hearings as that at which petitioner appeared—an admitted former Communist—testified that he worked on two classified projects while a Party member on the faculty of a leading educational institution, one for the Office of Scientific Research and Development, the other for the Navy Ordnance Bureau (Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., on *Communist Methods of Infiltration* (*Education—Part 3*), April 21 and 22, 1953, pp. 1046, 1049–1050, 1057). This witness further testified that shortly following his work on those two projects he worked for approximately a year, from some time "about 1944" to "late 1945," on the "highly classified" "Manhattan project" (*id.*, pp. 1050, 1057). The record does not clearly indicate whether he was still a Party member when he commenced his work on the latter project or whether he had left the Party just prior thereto. He testified that he quit the Party "around 1944" (*id.*, p. 1047). He was told, he said, that he had been "cleared to work on" the Manhattan project, and he "filled out regular forms" in this connection, but none of the

forms asked any questions about membership in the Communist Party (*id.*, p. 1050).

Another witness, likewise a self-confessed former member of the Communist Party, admitted to the Committee that, as a teacher at another university and while a Party member, he had, during World War II, worked on another "classified project", contracted for by the Office of Scientific Research and Development (Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., on *Communist Methods of Infiltration* (*Education—Part 5*), April 29, May 19, 26, 27 and 28, 1953, pp. 1538–1539, 1556–1557). He "presume[d]" that he "must have been cleared" for this work, but no one ever asked him whether he was a Communist and he did not volunteer the information (*id.*, p. 1557). The only thing he could recall in connection with the matter of clearance was "a form whose character I don't recollect that I signed" (*ibid.*).[51]

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[51] Another witness, who refused to state (on the basis of his constitutional privilege against self-incrimination) whether he had ever been a member of the Communist Party, testified that, as a graduate student with a research assistantship at a leading university, he had once worked on a research project in quantum mechanics and theoretical physics under a contract between the university and the Office of Naval Research (Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., on *Communist Methods of Infiltration* (*Education—Part 3*), April 21 and 22, 1953, pp. 1036–1038).

See also *Communist Methods of Infiltration* (*Education—Part 5*), pp. 1568–1569, 1573–1576, for similar testimony by another university teacher, who refused on grounds of privilege to state whether he had ever been a member of the Communist Party. And see *id.*, Part 1, pp. 63–64, 70, 87–88; Part 2, 182–

Such testimony supports our position that Congress, by virtue of the extensive Government-subsidized contract research programs (among other reasons), has a vital and legitimate concern with the problem of Communism in education, and also tends to show that the Committee, contrary to petitioner's arguments (Pet. Br. 29–49), in the main focused its inquiry on those aspects of the problem as to which the legitimacy of that concern is most apparent.

2. The Committee's questions to petitioner were related to a legitimate legislative inquiry into Communist infiltration into education

(*a*) Petitioner contends (Pet. Br. 51–52) that the Committee's "entire investigation, or at the very least the interrogation of petitioner and the section of the investigation of which it was a part, had as its sole purpose 'to expose for the sake of exposure,' and that it therefore did not serve a permissible legislative purpose" (Pet. Br. 51). He cites, as proof of his allegation that the Committee's sole purpose was to expose, a sentence in the Committee's 1954 *Annual Report* (H. Rept. No. 57, 84th Cong., 1st sess. (G. Ex. 10)) in which it was stated that "[t]he 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" (R. 262). He relies (Pet. Br. 51) on this Court's observation in *Watkins* that it had "no doubt that there is no congressional power to expose for the sake of exposure" (354 U. S. at 200).

133, 136–137, 139–141, 146; 225–227, 237; Part 3, 979–980, 981–986; 1015–1016.

However, the very passage of the *Watkins* opinion which contains this observation of the Court goes on to state (*ibid.*):

> * * * The public is, of course, entitled to be informed concerning the workings of its government. [Footnote reference omitted.] That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals. *But a solution to our problem is not to be found in testing the motives of committee members for this purpose. Such is not our function. Their motives alone would not vitiate an investigation which had been instituted by a House of Congress if that assembly's legislative purpose is being served.* [Emphasis added.]

Then, in a footnote reference, the Court adds (354 U. S. at 200, fn. 34):

> Compare the treatment of this point in *Barenblatt* v. *United States*, 240 F. 2d 875, 880–881 [and other cited cases].

This Court thus pointed to the treatment of this subject by the court below in its prior opinion in this case (which opinion the court incorporates by reference in its post-remand opinion; see R. 303).[52]

The court below, pointing out that the statement in the Committee's 1954 report on which petitioner relies was "in context, * * * part of an extended discussion of the whole activity of this committee and cannot be regarded as a statement of the sole or primary objec-

[52] This issue is not a point of difference between the majority opinion below and either of the dissenting opinions.

tive" (R. 279), concluded that "[a] reading of the full report indicates that the primary purposes of the inquiry were in aid of legislative processes" (*ibid.*). "Examination of the report," the court observed, "shows that legislative recommendations were made by the committee '* * * based upon investigations and hearings, in the year, 1954'" (*ibid*).[53] "It is unnecessary for present purposes," the court continued, "to comment on those recommendations except to say that they called for significant legislation, and illustrate that the committee did in fact recommend legislation based upon investigations and hearings in 1954, perhaps including the very hearing at which appellant testified. Apparently 'exposure,' if a purpose of the hearing in question, was not the primary purpose" (*ibid.*).

The Committee "was investigating communist infiltration in the field of education," the court concluded, "and did so pursuant to its duty to investigate the extent, character, and objects of un-American propaganda activities in the United States, and all other questions related thereto that would aid Congress in its legislative function. Taking this into consideration, together with the statement of the Chairman at the time the inquiry was inaugurated in February 1953,[54] as well as the statement of the committee counsel on the morning appellant [petitioner] appeared to

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[53] The part of the report (in evidence as G. Ex. 10) referred to by the court appears at pp. 22–23.

[54] The Chairman's statement appears at R. 76–79 and, in addition, at R. 285–288 as an appendix to the court's opinion. It is summarized at pp. 7–8, *supra*.

testify," we conclude that the [Committee's] dominant purpose in examining appellant was to acquire information which it regarded as useful in formulating legislative recommendations. This is a more valid appraisal than would result from concentrating on one isolated statement in the Annual Report. So long as competent evidence establishes a substantial legislative purpose in calling a witness before a congressional committee, and in its examination of him, we will not balance this purpose against other motivations. Once it is proven that the committee felt induced to call a witness in order to acquire information in aid of legislative processes, we think our limited function is exhausted" (R. 279–280).

As further indication that the Committee had a valid legislative purpose in interrogating petitioner, there is the statement of Committee member Doyle (made immediately following petitioner's refusals to answer and with the concurrence of Chairman Velde) that (R. 240; *supra*, p. 20):

> * * * the record should show that at this time there are pending before the United States Congress several active bills dealing with the question of subversive activities, dealing with the question of the Communist Party, * * * and I would like the record of this hearing of this committee to especially show * * * that this witness [petitioner] and these other witnesses could help us in line with our * * * responsibility to have hearings with reference to recommendations for legislation in this area * * *.

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[55] A footnote reference quoting the committee counsel's statement is omitted. The statement appears at p. 17, *supra*.

To this statement the Chairman added that, on the basis of information in the Committee's files, it was clear that (*ibid.*; *supra*, pp. 20–21):

> * * * the witness [petitioner] has information about Communist activities in the United States of America, particularly while he attended the University of Michigan * * * which * * * would be very valuable to this committee and its work.

Since "the primary purposes of the inquiry were in aid of legislative processes," as the court below remarked (R. 279) and as the record as a whole indicates, the fact that an incidental, coexistent purpose may have been to "demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" (*supra*, p. 69) did not render the questions illegitimate, so as to justify petitioner's refusal to answer.

(*b*) As we pointed out in our *Watkins* brief (No. 261, Oct. Term, 1956), pp. 29–30, the courts have been mindful that an inquiry need not be restricted to those facts which prove the need for new legislation or for modification of existing laws; nor is it limited to the precise area which Congress has power to regulate or prohibit. The power to investigate is almost always broader than the substantive authority which may eventually be exerted by the investigating agency, for not until the whole region of facts has been canvassed can it be determined where the definite boundaries of regulation should be drawn. It is just as important for Congress to be informed of facts which show pro-

posed or possible legislation to be undesirable or unnecessary, as it is for it to know the circumstances calling for affirmative action. In many areas, such as those impinging on freedom of speech or interstate commerce, Congress' power to legislate may even depend upon the existence or nonexistence of facts which can be shown only through a legislative inquest. Judicial inquiry into a committee's "legislative purpose" must therefore not be restrictive or hostile, but must take account both of the powers of Congress and of its pressing need to inform itself broadly. The latitude is necessarily wide. As was stated in *Townsend* v. *United States,* 95 F. 2d 352, 361 (C. A. D. C.), certiorari denied, 303 U. S. 664:

> A legislative inquiry may be as broad, as searching, and as exhaustive as is necessary to make effective the constitutional powers of Congress. *McGrain* v. *Daugherty,* 273 U. S. 135 * * *. A judicial inquiry relates to a *case,* and the evidence to be admissible must be measured by the narrow limits of the pleadings. A legislative inquiry anticipates *all possible cases* which may arise thereunder and the evidence admissible must be responsive to the scope of the inquiry, which generally is very broad. [Emphasis in the original.] [56]

Applying these principles, the courts have held it immaterial that a committee has proposed little legislation; the power to conduct a hearing is not meas-

[56] "Clearly," as was observed in *United States* v. *Josephson,* 165 F. 2d 82, 92–93 (C. A. 2), certiorari denied, 333 U. S. 838, "the Congressional power to investigate is as flexible as its power to legislate, once the latter power is established."

ured by recommendations for legislation, or their absence. *Townsend* v. *United States, supra,* 95 F. 2d at 355; *United States* v. *Josephson, supra,* 165 F. 2d at 89.[37] Similarly, the possibility that invalid as well

[37] This is not to suggest that the Committee on Un-American Activities has proposed little legislation. On the contrary, it has proposed a great deal of legislation, much of which has subsequently been enacted. For a complete listing of the Committee's recommendations and the subsequent action taken by Congress, see *Legislative Recommendations by House Committee on Un-American Activities; Subsequent Action Taken by Congress or Executive Agencies* (*A Research Study by Legislative Reference Service of the Library of Congress*), Committee on Un-American Activities, House of Representatives, 85th Cong., 2d sess., June 1958. In addition to legislative action, the study reveals that "executive agencies have put into effect policies, orders, or regulations relating to 13 recommendations by the committee" (*id.*, p. 2).

As noted in its Annual Report for the year 1954, the Committee over its sixteen years of existence "made numerous recommendations for the enactment of new legislation or the strengthening of existing laws dealing with subversive activities" (G. Ex. 10, p. 1). H. Rept. No. 57, 84th Cong., 1st sess. (G. Ex. 10, R. 24) (excerpts from this report appear in the printed record at R. 261–267). "It is worthy of note," states this report, "that at the commencement of 1954 all but 8 of the committee's 47 recommendations had been favorably acted upon by Congress or the executive branch" (R. 262). In large part as a result of the Committee's investigations and recommendations, the Internal Security Act of 1950 (64 Stat. 987) was enacted (G. Ex. 10, p. 2). (For a list of the recommendations of the Committee prior to 1953 and the action taken by Congress or executive agencies on such recommendations, see *Annual Reports of the Committee on Un-American Activities for the year 1953*, pp. 136–143, 144–156 (H. Rept. No. 1192, 83d Cong., 2d sess., G. Ex. 9, R. 24)). In 1954, pursuant to recommendations of the Committee (G. Ex. 10, pp. 2, 22), Congress passed legislation designed to break Communist control over certain labor unions (Communist Control Act of 1954, Sections 6, 10, 68 Stat. 775, 777, 778–780, amending the Internal Secu-

as valid legislation may result does not limit the power of inquiry. *Barsky* v. *United States, supra,* 167 F. 2d at 245; *United States* v. *Josephson, supra,* 165 F. 2d at 91. It is sufficient that some valid legislation could ensue from an inquiry. *McGrain* v. *Daugherty,* 273 U. S. 135, 177; *Sinclair* v. *United States,* 279 U. S. 263, 295; *Barsky* v. *United States, supra,* 167 F. 2d at 245. See also Brief for the United States in *Flaxer* v. *United States,* No. 60, this Term, at pp. 38–40, 49–50.

(*c*) Petitioner also argues (Pet. Br. 29–42) that the "articulated purpose and focus" of the Committee's inquiry was "the phase of the Communist Party" having to do with "thought, discussion and expression on social, political, and economic issues" (Pet. Br. 29, 30), and concludes (Pet. Br. 42–49) that the Committee thereby tended to cause "inhibition of all non-conformist expression" (Pet. Br. 42), "interference with freedom of association and conscience" (Pet. Br. 44), and "interference with [the] right [of teachers and others] to participate in [the] medium of expression" (Pet. Br. 47). We cannot agree, however, with the premise of this argument—that the "articulated purpose and focus" of the Committee's inquiry was merely the Communist Party's ideological influence on thought, discussion, and ex-

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rity Act of 1950), provided for the granting of immunity to certain witnesses appearing before congressional committees and grand juries (68 Stat. 745, amending 18 U. S. C. 3486) (see *Ullman* v. *United States,* 350 U. S. 422), and increased the penalty for peacetime espionage to death or imprisonment for any term of years or for life (Espionage and Sabotage Act of 1954, § 201, 68 Stat. 1216, 1219, amending 18 U. S. C. 794).

pression. The Committee was investigating the Party as an agency of a foreign government dedicated to the ultimate overthrow of our government by unlawful means.

Petitioner attempts to support his statement by a number of selected excerpts from the Committee Chairman's opening statement at the beginning of the hearings (Br. 29–30), the Committee's 1953 Annual Report in which it reported on the first phase of its inquiry into Communism in education (Br. 30–31), and the hearings themselves (Br. 32–42). But if the excerpts are examined in context, they fall far short of establishing that the "articulated purpose and focus" of the inquiry was the mere ideology of the Communist Party or the views it has taken on various public issues. Surely, for example, the two statements made by the Committee Chairman in his opening statement which petitioner cites in support of his thesis (Br. 29–30)—that "[t]he committee was greatly concerned with the evidence developed in the Hollywood hearings with respect to the type of 'thought control' practiced by the Communist Party upon its members" (R. 79), and that "[t]he committee is equally concerned with the opportunities that the Communist Party has to wield its influence upon members of the teaching profession and students through Communists who are members of the teaching profession" (R. 79)—lend no support to the thesis. The undeviating adherence to the Party line on all issues on which it takes a stand, which the Party demands of its members, is simply one aspect of that Party discipline which is so well known a

Party characteristic. Any thoroughgoing study of the Party's infiltration and penetration of a given field could reasonably be expected to include this phase of the Party's character. Read in its entirety (R. 76–79), the Committee Chairman's opening statement—which we have summarized at pp. 7–8, *supra*—is an entirely unexceptionable statement of the proposed bounds of a legitimate public inquiry. It includes, as we have seen, the following significant statement, which strikes the keynote of the nature of the inquiry which was about to be undertaken (R. 77):

> The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field.

The excerpts from the Committee's 1953 Annual Report on which petitioner relies (Pet. Br. 30–31) are no more probative of his thesis. The fact, for example, that the Committee report quotes witness Davis' account of why he "first joined the Communist Party and the reasons why he left it" (R. 244)—in which Davis reviewed the "ideological" considerations which moved him to join the Party (R. 244–245)—is plainly a weak reed. Davis, as the lead-off witness at the hearings, had given a detailed account of how the Communist Party operated in the campus cell of which he was a member (see *supra*, pp. 9–15). It was only natural, therefore, for the Committee report to relate, in Davis' own words, how

he happened to join the Party. But this hardly supports the assertion that the Committee's "articulated purpose and focus" of inquiry was in the realm of mere ideology. The same considerations apply to petitioner's reliance (Pet. Br. 31) on the fact that the Committee report, in giving the background of Daniel Boorstin, another cooperative committee witness, relates that prior to his joining the Communist Party he was a member of a "Marxist study group" at Oxford, where the Party's stand "against the Nazis" appealed to him (R. 246–247).

Similarly, the isolated excerpts from the record of the hearings themselves, which petitioner cites (Pet. Br. 32–42)—excerpts from a transcript covering hundreds of pages and recording the testimony of over thirty witnesses—fail, we submit, to support his contention. For more representative illustrations of the type of information the Committee was interested in and the kind of questions it asked, see *supra*, pp. 9–18, 67–68.

Petitioner refers (Pet. Br. 37–41) to the Committee's "compulsion [of witnesses who admitted their own Party membership] to name others" (Pet. Br. 37) as his final proof that the Committee's "articulated purpose and focus" of inquiry lay in the realm of "belief and opinion" (Pet. Br. 37). But these queries as to Communist colleagues do not show a concentration on mere beliefs; rather, the questions indicate a concern with the *activity* and *conduct* of Communist groups or units. Moreover, we have previously shown that the First Amendment confers no right on a witness, at a proper inquiry into Commu-

nist infiltration of an area with which Congress has a legitimate legislative concern, to refuse to disclose whether he is or has been a member of the Communist Party (*supra*, pp. 55–61; see also *infra*, pp. 81–86). *A fortiori*, a witness has no right under that Amendment to refuse to identify others in the movement known to him to have been Party members—since "Personnel is part of the subject" (*Barsky, supra*, 167 F. 2d at 246).

Finally, petitioner complains that "[t]he investigation was not directed at incitement or instigation of unlawful action to change our form of government," and indicates that "even as philosophical abstractions, force and violence were not a focus of thought or discussion in the groups to which the witnesses belonged" (Pet. Br. 42). But, as we have already pointed out (*supra*, pp. 73–76), the Committee's inquiry into Communism in education was not required to be limited to those aspects of the Party relating to its advocacy of forcible overthrow of this Government. The Committee was not conducting a Smith Act trial. It was inquiring into infiltration of the field of education by the extraordinary entity known as the Communist Party. The Communist Party's immediate activities in education, as in other fields, are not limited to advocacy of overthrow of the government. But, as Congress and this Court have recognized, the Party is nevertheless a real danger because its immediate goals are always pursued for the advantage of a foreign power and the ultimate end of unlawful overthrow. It is such continuous operation of Party units and adherents as Party

agents which creates an injury, not solely the advocacy by them of unlawful methods. It is wholly unrealistic to suggest, as petitioner apparently does, that because the conspiratorial aspects of the Communist Party should properly be the main focus of inquiry the "intellectual" or "ideological" aspects of that conspiracy must be forbidden territory—even to touch upon which renders the entire inquiry invalid as an illicit invasion of constitutionally protected freedoms. In the language of the court below (R. 284–285), "Whether the Communist Party embraces not only conspiratorial groups but intellectual discussion groups as well, the relationship between them, the group most prevalent, and the extent to which an individual might participate in the activities of each, whether such groups operate within or are connected with public educational institutions, place the questions asked appellant [petitioner] clearly within the pale of valid inquiry."

3. Petitioner's interest in nondisclosure is subordinate to the Congressional interest

We are mindful of this Court's statements that when a committee of Congress "force[s] revelations concern[ing] matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous," and that "[t]he First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking" (*Watkins*, 354 U. S. 178, 197). But, on the other hand, the Court also pointed out that "despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries

are barred" (*id.* at 198). It is where the investigation is "unrelated to any legislative purpose" or where there is a "mere semblance of legislative purpose" (*ibid.*) that the compulsion to testify will not be judicially sanctioned. As we have shown, this inquiry did not fall into the latter category of investigations without a legitimate legislative purpose. Accordingly, petitioner's interest in nondisclosure must be subordinated.

(*a*) Petitioner's arguments in favor of the dominance of his interest in nondisclosure have already been answered. *Supra*, p. 55 *ff.* We have stressed that the Congressional and Committee interest in Communist infiltration into higher education was wholly legitimate; that the particular questions asked petitioner related to membership in the Communist Party and not to beliefs or opinions; and that membership in that Party is and was a proper subject of inquiry because of the Party's nature, structure, and objectives. In these circumstances, any inhibition on political or social expression resulting from compulsion to answer the questions is more than counterbalanced by the greater interest warranting disclosure.[58]

(*b*) (*1*) The brief of the American Association of University Professors, as *amicus curiae*, criticizes the Committee's interrogation of petitioner as having

[58] It goes without saying that in *National Association for the Advancement of Colored People* v. *Alabama*, 357 U. S. 449, the interests in favor of nondisclosure were far weightier, and those favoring compulsory disclosure were far less substantial. See also *supra*, pp. 60–61, and Brief for the United States in *Flaxer* v. *United States*, No. 60, this Term, at pp. 57–58.

"unjustifiably infringed his freedom as a member of the academic community" and as having "thereby invaded the autonomy which is necessary to colleges and universities" (p. 13 *ff.*). At the heart of the *amicus'* argument, however, lie several unacceptable assumptions, which make invalid its claim that there has been here an unconstitutional abridgment of academic freedom.

The first untenable assumption is that the Communist Party of the United States is—and the Congress and its committees have no reason or justification for treating it otherwise than—merely another political party. Thus, the *amicus* refers to the "pall of suspicion" which is cast on a teacher when he is called before a legislative committee and "asked under penalty of contempt to name his political associations" (p. 19).[20] But the questions which petitioner resisted, as we have been at pains to point out, related to his membership in the *Communist Party*. And Congress and its committees, as we have seen (*supra*, p. 55 *ff.*), were thoroughly justified in regarding this organization as something far different from just another political party.

Second, the Association assumes that petitioner was questioned concerning his beliefs, his studies, or his teaching (see Br. 13 *ff.*, 26). But we have emphasized that the questions related to Communist Party *membership*, and not to beliefs or opinions. Queries as

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[20] Compare the *amicus'* apparent reference to the Haldane Club, of which petitioner was a member, as simply a University of Michigan "campus organization" (Br. 21)—on which see *supra*, pp. 53–54.

to such membership cannot be equated with the investigation into beliefs which the Association is really challenging.

Third, the Association departs from the facts of this particular case to indict the Committee (and other committees) as a whole, and to excuse this petitioner from answering because other witnesses have been asked other types of questions. The theme of the *amicus* brief is not this particular inquiry but the entire complex of legislative inquiries into education. We submit, however, that the basic principles of American law require that if disclosure is warranted in this case it should not be barred because disclosure may have been unwarranted in other cases.

The fourth questionable premise is that education is a "special" domain to which "special considerations"—applicable to no other area of national affairs—must govern in any judicial consideration of the congressional "power to investigate Communism" and questions arising therefrom (Br. 25). But, as observed by the court below (R. 281–282):

> While it is true * * * that Congress has broader powers to enact legislation in the field of labor than it does in the field of education, it is not true that persons who incidentally happen to be teachers have greater immunity from inquiry into their activities than do labor leaders and screen writers, when those activities relate to matters which are a legitimate concern of the Congress.

Fifth, *amicus* incorrectly assumes that all the requirements of academic freedom have constitutional

status. A basic postulate of its brief is that whatever advances academic freedom necessarily has the protection of the First Amendment. Academic freedom, however, can and does go beyond federal constitutional protections. One can surely favor the widest limits of freedom for teachers without asserting that those limits are coterminous with limits *required* by the Constitution.

(*2*) The Court may be interested in another view than *amicus'* of the true nature of responsible academic freedom. This is found in the 1953 statement by its sister organization, the Association of American Universities, on *The Rights and Responsibilities of Universities and Their Faculties* (R. 251–259). Stating that it "share[d] the profound concern of the American people at the existence of an international conspiracy whose goal is the destruction of our cherished institutions," and noting that a characteristic of this system was "thought control—the dictation of doctrines which must be accepted and taught by all party members," it held that "[n]o person who accepts or advocates such principles and methods has any place in a university," and that, "[s]ince present membership in the Communist Party requires the acceptance of these principles and methods, such membership extinguishes the right to a university position" (R. 258). Cf. *Beilan* v. *Board of Education,* 357 U. S. 399, 416 (Justices Douglas and Black, dissenting).

Another pertinent statement on the impact on academic freedom of the issues raised by the instant case is that by Lewis Webster Jones, former President of

Rutgers University, on the occasion of the dismissal of two professors because of their refusal to answer a congressional committee's questions concerning their Communist Party membership (99 Cong. Rec. A546):

> * * * The questions [which the professors] refused to answer did not relate to their opinions, but to their membership in the Communist Party. Such membership is not compatible with the freedom of thought and inquiry on which American teaching and research are based. *It is no invasion of that freedom, but a necessary measure of protection of the freedom of all of us, to seek to determine whether teachers and others in positions of trust are committed to the discipline and program of the Communist Party.* * * * [Emphasis added.]

"The Communist Party is not a political party like any other," the statement of President Jones continues, but rather (*ibid.*)—

> * * * a secret, conspiratorial organization imposing on its members a discipline and a regimentation of thought quite alien to the normal political parties of a democracy. * * *

For this reason, "[t]he public has the right, through its legally constituted representatives, to inquire into the Communist Party membership of individuals," and "[p]ublic investigation of the universities" (*ibid.*)—

> * * * implies no invasion of academic independence.

IV.

There is no foundation for petitioner's claim that his conviction must be reversed because he was not sufficiently apprised of the pertinency of the questions to the subject of the inquiry

Petitioner's final contention (Pet. Br. 60–63) is that his conviction "must be reversed because the Committee did not clarify for him either the subject of the investigation or the pertinence thereto of the" questions which he refused to answer (Pet. Br. 60). This argument is without merit; the case is plainly distinguishable on this score from *Watkins* v. *United States*, 354 U. S. 178, upon which the contention rests.[60]

Watkins held that, because it is of the essence of the offense defined by 2 U. S. C. 192 that the question or questions which the witness refused to answer be "pertinent to" the subject under inquiry by the committee, due process demands that, "[*u*]*nless the subject matter has been made to appear with undisputable clarity*" (from the totality of the circumstances attending the asking of the questions, including the terms of the committee's authorizing resolution), and "*upon objection of the witness on grounds of pertinency*," he be clearly apprised, at the time his answers are demanded, "what the topic under inquiry is and the connective reasoning whereby the precise questions asked relate to it" (354 U. S. at 214–215; emphasis added).[61]

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[60] The instant contention was not adopted by any of the judges of the court below.

[61] The importance of the requirement that there be a specific objection by the witness on grounds of pertinency is emphasized by the fact that in *Watkins* a footnote reading "Cf. *United States* v. *Kamin*, 136 F. Supp. 791, 800" is appended to the

Thus, at the heart of the *Watkins* holding is the requirement that the witness, in order successfully to defend against a charge of willful refusal to answer questions, must have raised the issue of lack of pertinency, by appropriate objection, at the time he was called upon to answer the questions. And this, clearly, is no mere technical requirement, but rather one rooted in recognition of the need of fairness as between the witness and the committee. For the purpose of the requirement is to give the committee the opportunity to explain to the witness the logical nexus between the answer sought and the subject of inquiry, in the event that the nexus is not "undisputabl[y]" clear already."

In this case, as we show below, not only did petitioner not object to the questions on the ground of lack of pertinency, but their pertinency was in any event undisputably clear, as the court below held. The case is distinguishable from *Watkins* in both of these decisive respects.

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pertinent passage of this Court's opinion, and the *Kamin* decision, at the page of the opinion referred to by this Court, similarly adverted to the necessity of a specific objection based upon grounds of pertinency. The pertinent passage of the *Kamin* opinion reads: "The defendant contends that it is not enough for a question to be pertinent—the witness must be informed of the subject matter, so that he may have a definite standard by which to determine whether he should answer. *Because if he was not so informed he admittedly indicated no interest, and did not choose to supplement any deficiency in his knowledge by asking either the Chairman or his own counsel, I regard this contention as immaterial.* * * *" (136 F. Supp. at 800; emphasis added).

" Cf. *United States* v. *Bryan*, 339 U. S. 323, 333; *United States* v. *Fleischman*, 339 U. S. 349, 352.

A. Petitioner at no time objected to the questions on grounds of lack of pertinency

That petitioner never objected on pertinency grounds to the questions involved in the indictment, or to any of the Committee's questions, is clear from a reading of the transcript (R. 218–240). As noted by the court below, "[t]he record of the hearing, at which Barenblatt appeared and during which the questions in controversy were asked, is devoid of any objection interposed on the ground of pertinency. Indeed, every indication is that he came prepared to refuse to answer any questions of moment—pertinent or not" (R. 299). Noting that petitioner appeared before the Committee accompanied by counsel and "armed with an eleven-page prepared, written statement entitled 'Objections to Jurisdiction of the Committee on Un-American Activities and to Questions Propounded by It,'" the court observed that "[t]he statement can best be described as a lengthy legal brief attacking the jurisdiction of the committee to ask appellant *any questions* or to conduct *any inquiry at all,* based on the First, Ninth and Tenth Amendments, the prohibition against bills of attainder, and the doctrine of separation of powers"[23] (R. 299; emphasis added). "Whenever appellant was asked a question which he refused to answer," as the Court of Appeals further remarked, "he asked permission, or attempted without permission, to read the prepared statement" (R. 302).[24]

[23] The statement appears at R. 227–235.

[24] After petitioner had attempted a number of times to read the statement (R. 220–226), it was permitted to be received in evidence as "Barenblatt Exhibit No. 1" (R. 227–235), after

This prepared statement did not constitute—as petitioner now argues it should be deemed to have constituted (Pet. Br. 8–9, 60–61)—the making of an objection on grounds of lack of pertinency to the subject of the inquiry. It does not require an eleven-page "legal brief" to object that a question is not pertinent to the subject under inquiry, and objections based on "the First, Ninth and Tenth Amendments, the prohibition against bills of attainder, and the doctrine of separation of powers" cannot do service for an objection based on alleged lack of pertinency.[65]

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which he was told by the Committee Chairman that, in order to save time, he might, whenever he declined to answer a subsequent question, make his declination on the grounds set forth in the statement (R. 235)—which procedure was followed (R. 237–238).

[65] In his effort to squeeze from the record of what transpired at the hearing an objection based on grounds of lack of pertinency, petitioner points to the fact that at one point in the eleven-page written statement which was received in evidence by the Committee there appeared (see R. 229) a quotation from a decision of this Court (*Jones* v. *Securities & Exchange Commission*, 298 U. S. 1, 26) that "[t]he citizen, when interrogated about his private affairs, has a right before answering to know why the inquiry is made" (Pet. Br. 9, 60). Clearly, however, a committee of Congress is not chargeable with knowledge that a witness is raising an issue as to the pertinency of a question to the subject under inquiry on the basis of nothing more than a quotation from a court opinion appearing in an eleven-page legal brief—physically received in evidence at the hearing—which is otherwise non-germane to that issue. Compare the clarity and specificity with which the issue of pertinency was raised in *Watkins*, 354 U. S. at 185, and see *Noonan* v. *Caledonia Mining Co.*, 121 U. S. 393, 400, where this Court emphasized the necessity that an objection, to be availed of in a judicial appeal, must be made at the trial with sufficient specificity to enable the trial court to consider its merits and obviate it if deemed well taken.

B. In any event, the pertinency of the questions was undisputably clear

We submit that in any event the pertinency of the questions which petitioner refused to answer was undisputably clear to him at the time he made his refusals.

We believe it to be clear from the Statement, *supra*, pp. 17–21, that, as the majority opinion below (at R. 297–303) demonstrates in detail, petitioner was thoroughly aware at the hearing of the nature of the subject under inquiry ("communism in education" (R. 298)), and how the particular questions were germane to that subject. Since petitioner does not, in our opinion, begin to refute this conclusion, there is no occasion to elaborate on the detailed showing in the opinion below that petitioner knew, when testifying, the nature of the subject of inquiry, and fully appreciated the "connective reasoning" by which the precise questions related to it.

Suffice it to emphasize that petitioner admitted having heard the testimony of witness Crowley, who testified shortly before petitioner (*supra*, pp. 17–18); that the Committee counsel, in introducing Crowley to the Committee, stated that the "field covered" would be "communism in education" and Crowley's "experiences and background in the party" (*supra*, p. 17); that the bulk of Crowley's testimony concerned his Communist Party activities at the University of Michigan (*supra*, pp. 17–18); and that Crowley identified petitioner as a member of the Party's Haldane Club at that university (*supra*, p. 18). Three witnesses who testified immediately after Crowley had also been identified by the latter as fellow members of the Com-

munist Party at the University of Michigan, and when asked about their Party activities there and elsewhere they refused to answer, invoking their privilege against self-incrimination (*supra*, pp. 18–19). Petitioner, who was next called, after admitting in reply to the Committee's questions that he had been a teaching fellow at the University of Michigan and that he knew Crowley while there and had heard his testimony, refused to state whether he had ever been a member of the Communist Party or of the Party's Haldane Club (*supra*, pp. 19–21).

As the court below stated, "[t]hese questions, and the balance of the questions forming the basis of the indictment, viewed in the light of what the committee counsel had said and Crowley's preceding testimony, all in Barenblatt's presence, made indubitably clear to Barenblatt the nature of the subject under inquiry to which the questions were directed" (R. 299). "To indicate the length," indeed, "to which the [Committee] went to indicate to Barenblatt the pertinency of the questions, even though the question of pertinency was not raised by him," the Court of Appeals referred to statements made by Chairman Velde and Committee member Doyle, at the conclusion of petitioner's testimony, to the effect that bills were then pending before Congress "dealing with the question of the Communist Party" and that information in the Committee's files "shows clearly that the witness [petitioner] has information about Communist activities in the United States of America, particularly while he attended the University of Michigan" which would be valuable to the Committee in carrying out its "Public Law 601

responsibility" to hold hearings and make recommendations for legislation (R. 301–302; see *supra*, pp. 20–21).[66]

Finally, as noted by the Court of Appeals (R. 302), petitioner's prepared statement which the Committee permitted to be received in evidence (see *supra*, pp. 89–90)—

> in no way indicates that he had any doubt as to the subject under inquiry or as to the pertinency of the questions asked. On the contrary, everything points to Barenblatt's knowledge of the subject and his knowledge of the pertinency of the questions asked.

It is submitted, in short, that on this record the following observations of this Court with reference to the contempt statute here involved fully apply to petitioner (*Sinclair* v. *United States*, 279 U. S. 263, 299, cited with approval in *Watkins*, 354 U. S. at 208):

> Intentional violation is sufficient to constitute guilt. There was no misapprehension as to what was called for. The refusal to answer was deliberate. The facts sought were pertinent as a matter of law, and § 102 made it appellant's duty to answer. * * *

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[66] In his petition for certiorari, petitioner argued that these statements could not be deemed to have "put [him] on notice of the nature of the inquiry" because they were made "after [his] testimony was concluded" (Pet. 14), but the argument is not repeated in the brief on the merits. As we pointed out in our brief in opposition (at p. 14, fn. 12), the statements in question were made while petitioner was still on the stand (see R. 240–241), and, moreover, they constituted but one of many indications noticed by the court below as evidencing petitioner's awareness of the subject of inquiry and the pertinency of the questions.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.
J. WALTER YEAGLEY,
Acting Assistant Attorney General.
PHILIP R. MONAHAN,
DORIS H. SPANGENBURG,
Attorneys.

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APPENDIX

Areas of Interest of the Federal Government in Higher Education

1. *Land-grant colleges and universities*

Congress appropriates substantial funds annually for the support and maintenance of the so-called land-grant colleges and universities, located in every state of the Union as well as in the several Territories. One of the oldest forms of federal aid to education, the land-grant college and university aid program began in 1862, when the Morrill Act, designed to insure the development in each State of at least one college adapted to the educational needs of persons engaged in agriculture and industry, was signed by President Lincoln. The act authorized grants to the States of 30,000 acres of land, or the equivalent in scrip, for each Representative and each Senator. State legislatures were expected to provide sites and essential buildings and to make additional appropriations for necessary operating expenses. In 1890, the Second Morrill Act was enacted, providing for annual grants of Federal funds for the land-grant institutions. The 1890 law provided for an initial appropriation of $15,000 for each State or Territory, with an increase of $1,000 each year for ten years, after which the annual appropriation was to be $25,000. In 1907, the so-called Nelson Amendment to the 1890 Act authorized new and increased appropriations. Further annual increases of Federal assistance for these colleges and universities have been provided through

the Bankhead-Jones Act of 1935, as amended in 1952. The latter Act provides that $1,000,000 be appropriated annually for the States and the Territories of Alaska and Hawaii to be distributed as flat grants of $20,000 each, and further provides for the appropriation of in excess of $1,500,000 to be allocated to the States and Territories in the proportion which the population of each is to the total population of all, as determined by the last preceding decennial census. The total annual federal appropriation for the land-grant colleges and universities for each of the years 1954–55 and 1955–56 amounted to $5,051,500.[1]

2. *The off-duty education program for personnel of the armed forces on active duty; the tuition aid program*

A significant and growing area of Federal concern with college and university education is the so-called voluntary off-duty education program for personnel of the armed forces on active duty, administered by the United States Armed Forces Institute, more commonly known as USAFI.[2] In addition to the courses offered directly by USAFI, eligible service personnel may enroll in correspondence courses available through USAFI from a large number of participating colleges and universities. The program is conducted by contract agreement between the Federal Government and the individual educational institutions. If the student enrolls through USAFI, the Government

[1] Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education 1954–55 and 1955–56* (1956), pp. 20, 28–30.

[2] Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education 1954–55 and 1955–56* (1956), pp. 89–95; USAFI Catalog (9th ed. 1957), pp. 5–7; American Council on Education, *Your Life Plans and the Armed Forces* (1955), pp. 53–62.

pays for the entire lesson service, the student paying only a small enrollment fee covering the administrative cost of enrollment and the price of textbooks and materials.[3]

In addition, under the so-called Tuition Aid Program, military personnel may, in their off-duty hours, and to a major degree at government expense, enroll in on-campus classes at eligible colleges and universities of their choice. Under the program the Government pays up to 75 per cent of the cost of tuition, not to exceed $7.50 per semester hour or $5 per quarter hour.[4]

3. *The ROTC programs and the Navy Five Term College Program*

The well known Reserve Officers Training Corps (ROTC) programs, which have long been established by all three branches of the armed services in leading colleges and universities,[5] constitute another important basis for congressional interest in and concern with college and university education. Less well known is the so-called Five Term College Program, an educational program designed to bring the academic education of Naval Reserve officers who have transferred to the Regular Navy up to the equivalent of that of a Naval Academy graduate. Under it, officers with less than two years of college background may be ordered to a Navy ROTC college to receive

[3] USAFI Catalog (9th ed. 1957), pp. 12, 105–107.

[4] American Council on Education, *Your Life Plans and the Armed Forces* (1955), p. 62; *Naval Training Bulletin*, Information and Education Issue, Bureau of Naval Personnel, Autumn 1957, NavPers 14900, pp. 9–10.

[5] See 10 U. S. C. 381 *ff.*; 34 U. S. C. 821 *ff.*; American Council on Education, *Your Life Plans and the Armed Forces* (1955), pp. 48, 131–132.

up to a maximum of five college terms of instruction at government expense.[6]

4. *The educational-assistance programs for World War II and Korean veterans*

Since World War II the Federal Government has subsidized in very large part the tuition and related educational costs of eligible veterans both of World War II and the Korean hostilities who have elected to take advantage of this major veterans' assistance program by furthering their education at State and private colleges and universities of their choice. The very substantial expenditure of Federal funds for this purpose (see fn. 7, *infra*) constitutes another important basis for continued congressional concern with the problem of Communism in education. The Servicemen's Readjustment Act of 1944 (58 Stat. 284) established the subsidization program for World War II veterans. Its counterpart for veterans of the Korean episode was embodied in the Veterans' Readjustment Assistance Act of 1952 (66 Stat. 663).[7]

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[6] See American Council on Education, *Your Life Plans and the Armed Forces* (1955), p. 135.

[7] During the 1953–54 school year—the year in which petitioner appeared before the Committee—veterans' training under these and related laws having to do with vocational rehabilitation was conducted in a total of 12,500 educational institutions, including those of college level and below. Expenditures during the 1954–55 school year brought the total federal payments since the inception of the education, training, and vocational rehabilitation programs for veterans to substantially in excess of $17,000,000,000. See Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education 1954–55 and 1955–56* (1956), pp. 123–124, 127.

5. *The State Department's educational exchange programs*

The Department of State conducts, pursuant to congressional authorization, a program of International Educational Exchange involving in the neighborhood of 7,000 exchanges per year and 70 countries. The purpose of the program is to promote better understanding between the people of the United States and the people of other countries. Opportunities are provided for Americans to pursue educational activities abroad and for foreign nationals to undertake similar projects in the United States. Participants include students, educators, newsmen, industrialists, and others who are influential in molding public opinion at home and overseas. Federal funds allotted for educational exchange programs for each of the years 1954–55 and 1955–56 amounted to in the neighborhood of $20,000,000.[8]

Related to the International Educational Exchange program is the system of so-called Inter-University Contracts. For this program, federal funds are used to secure the services of American colleges and universities for assistance to foreign universities in improving teaching, curriculum, research, and extension work. Through training in the United States' institutions, and in their own institutions under faculty members provided by American institutions, the foreign professors are prepared to carry new methods into practice on a permanent basis. For this purpose, universities in the United States, under federal sponsorship, have contracted with colleges and universities

[8] Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education 1954–55 and 1955–56* (1956), pp. 109–113.

of other countries. Under these contracts, professors from American universities are loaned to host universities in some 36 foreign countries. After a year or two of work in partnership with a professor in the other country, the counterpart professor comes to the contracting university in the United States to study for a year. Later, the American professors return to their regular work in the United States. In December 1955, approximately 500 American professors were at work in host universities in foreign countries, and about 250 professors from host countries were at universities in the United States. The federal funds which had been allotted to operate these programs as of September 1955 amounted to in excess of $50,000,000.[9]

6. *The deductibility for income tax purposes of contributions to colleges and universities*

Federal income tax law permits contributions to any non-profit institution operated exclusively for educational purposes to be deducted from gross income in calculating net taxable income (26 U. S. C. 23 (o) (2)). Contributions by individuals and corporations to all ordinary State and private colleges and universities are deductible under this provision.

7. *University research programs under government contracts*

Another important basis of congressional concern with the problem of Communist infiltration of the faculties and staffs of American colleges and universities is the extensive use by federal departments and agencies—paid for out of federal funds pursuant to contracts between the government departments and the individual universities—of the research

[9] *Id.*, pp. 115–117.

facilities of these institutions. The magnitude and significance of these contract research programs is reflected by the fact that the Department of Defense alone, in the single fiscal year 1954–55 (which commenced three days following petitioner's appearance before the Committee), entered into more than 1,900 research and development contracts with the nation's colleges and universities, involving a total expenditure of in excess of $138,000,000.[10] Atomic Energy Commission contracts for unclassified research in the physical sciences in university and college laboratories, as of 1956, are estimated to have involved the annual expenditure of some $14,300,000, with expenditures under contracts in the biological and medical sciences totaling an additional $8,000,000.[11] The National Science Foundation is another substantial contractor with American colleges and universities for the promotion of research. Established by the National Science Foundation Act of 1950,[12] its purpose is, among other things, "to develop and encourage the pursuit of a national policy for the promotion of basic research and education in the sciences," "to initiate and support basic scientific research * * * by making contracts or other arrangements (includ-

[10] Office of the Assistant Secretary of Defense (R & D), Department of Defense, *Department of Defense Non-Profit Research and Development Contractors* (Pamphlet RD 124/42, February 15, 1956), pp. 1–5. As a consequence of the heavy subsidization of university research by the Defense Department, a recent writer has referred to "large segments of the universities" as being virtually "satellites of the Armed Services" (Lerner, *America As a Civilization* (1957), p. 743).

[11] Office of Education, U. S. Department of Health, Education, and Welfare, *Federal Funds for Education, 1954–55 and 1955–56* (1956), p. 131.

[12] 64 Stat. 149 *ff.*, 42 U. S. C. 1861–1875.

ing grants, loans, and other forms of assistance) for the conduct of" such research, and to award "scholarships and graduate fellowships in the mathematical, physical, medical, biological, engineering, and other sciences" (§ 3, 64 Stat. 149). During the fiscal year 1955–56, Foundation contracts with colleges and universities for the support of basic research totaled some $9,600,000.[13]

[13] *Sixth Annual Report of the National Science Foundation, Fiscal Year 1956*, H. Doc. 49, 85th Cong., 1st sess., pp. 44–45.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 35

LLOYD BARENBLATT,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

REPLY BRIEF FOR PETITIONER

EDWARD J. ENNIS
NANETTE DEMBITZ
c/o American Civil Liberties Union
170 Fifth Avenue
New York 10, N. Y.

DAVID SCRIBNER
15 William Street
New York 5, N. Y.

Attorneys for Petitioner

ROWLAND WATTS
Of Counsel

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REPLY BRIEF FOR PETITIONER

Reply to Respondent's Point I.B (pp. 34-38)

Petitioner argues (Br. 20-25) that the language of the legislative mandate to the House Committee on Un-American Activities (unchanged since its formulation in 1938) both on its face and as interpreted by the Committee for the last twenty years, and even since the *Watkins* decision (Br. 23, ft. nt. 9), is fatally vague and must be judicially considered in its entirety in determining its validity as authorization for compulsory process. Respondent, apparently in the light of *Watkins*, does not attempt to argue either that the Committee's charter is sufficiently definite on its face or that the Committee exercised its claimed power only in definite areas and thus sought to endow vague language with definite and defensible meaning. Respondent seems to concede tacitly the fatal vagueness of the language

considered on its face and also the Committee's use of the language as authority to investigate generally and not merely in definable areas. The respondent apparently retreats to the limited argument that whatever the invalidity of the authorizing resolution "as authority for an inquiry into *other* fields or subjects" (Br. 38, emphasis respondent's), it may be saved as authority to investigate Communism and Communist activities because the legislative history indicates that Communism was one subject which the House of Representatives had in mind when it granted and renewed the grant of authority to investigate "subversive and un-American propaganda."

Petitioner submits that the fatally vague language of the resolution cannot be rescued judicially in this manner by importing one definite meaning into its defectively general words, particularly where invasion of First Amendment areas is involved and where concededly Congress has acquiesced in use of the claimed authority in areas outside of the area now sought to be defined. It is for Congress, not for the courts, to give a definite mandate to the Committee if it wishes to do so in the light of the *Watkins* decision.

But even if, contrary to petitioner's primary contention, the resolution might be saved as partially valid, it cannot, as respondent contends, be held constitutionally definite if applied to authorize any investigation whatever relating to Communism. The investigation at issue in *Watkins*, which engendered this Court's recognition of the excessive breadth of the Committee's charter, had as much relation to Communism as the instant investigation. As the Court was there aware, if the Committee has power to investigate any subject on the mere basis that it has an actual or alleged connection with Communism, it can "radiate outward infinitely" (354 U. S. at 204) in the political area.

If the resolution is to be saved it must be done by finding the intention of the House in the language of the resolution, such as the language authorizing investigation of subversive and un-American propaganda which "attacks the principle of the form of government as guaranteed by our Constitution" (Resp. Br. 36). To this end respondent argues that un-American propaganda activities were meant to include propaganda designed to overthrow our Government by force and violence and activities of foreign governments to influence "American public opinion in such a manner that domestic and external affairs would be affected" (Br. 36). Possibly the Committee's charter might be construed as sufficiently definite if limited to these categories or areas of investigation narrowly construed. If so applied the Committee's power would not cover the all-inclusive authority in the field of political persuasion which is the chief menace to First Amendment rights.

But even if the resolution were so saved by such construction, it is clear that the beliefs, expressions of opinion, associations and intellectual influence of college and university professors, at which this investigation was directed, had no substantial relation—if any relation at all—to propaganda designed to overthrow the Government violently, or to activities of foreign governments attacking our constitutional form of government. Therefore, even assuming the possibility of the partial validity of the House resolution, its application to compel testimony in the instant investigation in the field of peaceful and political persuasion by private citizens is unconstitutionally broad and vague.

Reply to Respondent's Point II-B (pp. 45-53)

Respondent argues that although the resolution refers neither to Communism nor education the House intended to authorize an investigation of Communism and Communists in education because in the debates on appropriations for the Committee the subject of such an investigation was discussed (Br. 47-52). The respondent's argument implies that wholly apart from the language of authorization used in the resolution the House's acquiescence in, and financial support of, the Committee's investigative activities constitutes legislative authorization of such activities.

The petitioner submits that establishment of investigative authority in this manner, independently of the language of the resolution, cannot be judicially approved if confusion and disorder are to be avoided. The respondent's argument is in effect that House debate virtually takes the place of the language of the authorizing resolution. Surely one limit to this recourse to legislative history is that it cannot independently supply the intent of the House but can merely supply the intended meaning of the words used in the resolution. The petitioner contends that whatever intention of some House members the debates relied upon disclose, the House in the language used in the resolution failed to authorize an investigation of education with that clarity which should be required if the exercise of legislative power enters an area requiring a judicial determination of constitutionality.

Persuasive reasons exist to require the House to express with reasonable clarity an intention to exercise legislative power which may infringe constitutional rights of private persons. The members of Congress, as well as the judiciary, are sworn to uphold the Constitution and therefore it is appropriate procedurally to require reasonably clear lan-

guage disclosing a deliberate intention to exercise the questioned legislative authority. After all the House has had no difficulty referring either to Communism or education when its intention was to include such areas.

Finally, the language of the resolution should be clear enough to advise the persons summoned as witnesses of the Committee's authority to question them. Certainly the language of the instant resolution does not satisfy this test. Neither the public nor the courts should be required to speculate as to the extent of the authority the House intended to vest in the Committee pa icularly where the difficulty is easily avoided by the House, initially or by amendment, stating the extent of the authority granted. A judicial rule requiring reasonable clarity in the authorizing resolution in itself would go far towards limiting the controversy in this field of legislative investigation by giving the House the opportunity, as well as the obligation, to consider the extent of the authority it wished to grant and by giving the public and prospective witnesses a clearer view of the authority the House intends its committees to exercise.

Reply to Respondent's Point III (pp. 53-86)

1. *Petitioner's Refusal to Answer as to Communist Party Membership.*

Respondent argues initially (Br. 30-31, 53-55) that the petitioner's conviction may be upheld for refusal to answer whether he was (Count One) or had been (Count Two) a Communist Party member and that therefore, apart from refusal to answer the other questions involved, this case does not involve "questions as to one's beliefs or general associations or political thinking" (Br. 30). Petitioner submits that the correct application of the constitutional and judicial principles delimiting the scope of Congressional

investigations does not permit so simple and easy a solution.

Upon petitioner's refusal to answer the initial question the Committee did not pursue its inquiry into his opinions, associations and efforts at political persuasion in accordance with the purpose and pattern of the investigation as disclosed by the examination of the responsive witnesses who preceded petitioner. Nevertheless, the lawfulness of his refusal to answer the first two questions about Communist Party membership can be judged only in the light of the purpose and pattern of the investigation in combination with the basis for selecting him individually for interrogation in an investigation with such a purpose. The validity of a question cannot be judged out of context because any question by an investigating committee to a private citizen is unauthorized outside of the context of the authority for and purpose of the investigation.

It is an obvious invasion of privacy, and invalid on this score alone, for a committee to summon and question a witness without justification in terms of investigative purpose as well as individual factual basis showing a likelihood of securing information from him pertinent to that purpose.

Respondent's stress on petitioner's asserted membership in the Communist Party, as distinguished from the Haldane Club of the Party (Br. 53-54), is beside the point. In petitioner's view it is immaterial whether petitioner was alleged to be a member of the Communist Party as such, or of a Party unit known as the Haldane Club, whether he refused to answer as to one or the other. In petitioner's brief the focus on the question of membership in the Haldane Club of the Communist Party was because that question appeared most accurately to reflect whatever justification existed for questioning petitioner. The vital circumstances are that the purpose of the investigation was to examine the intellec-

tual influence of teachers who allegedly were or had been Communist Party members, and that the basis for summoning petitioner was his alleged membership in a Communist Party group engaged in discussing such topics as the relation of Marxism to the arts. Conceding in this argument that the Committee's summoning and questioning petitioner on the basis of the information it had about him was consistent with the purpose of its investigation, the issue is whether the restraints imposed on First Amendment rights by such an investigation with the instant purpose and scope were justified by a compelling legislative objective (Petr. Br. 50-60). The validity of all the questions asked petitioner must stand or fall on the basis of whether it was constitutional for the Committee to investigate the intellectual and peaceful persuasion type of Communist Party activity by college and university teachers and students.

2. *Federal Grants and Subsidies.*

The respondent then argues at some length (Br. 61-69) that although "education is a matter primarily of state and local concern" (Br. 62)[1] the Federal Government has acquired some indefinite power with regard to all institutions of higher learning by virtue of federal grants and subsidies to some of them or to some of their students.

We have already pointed out in our main brief that the investigation must be justified in the light of the Committee's purpose when it was undertaken, and that it was not directed at the matter of grants and subsidies (Petr. Br. pp. 56, 58). However, in view of respondent's emphasis on the view that the Federal Government has a concern with education which justifies Congressional investigation,

[1] See *Brown* v. *Board of Education*, 347 U. S. 483, 493; *Everson* v. *Board of Education*, 330 U. S. 1, 6-7; *Meyer* v. *Nebraska*, 262 U. S. 390, 402.

and doubtless regulation, of it, we shall address ourselves to this issue.

Education cannot be Federalized through Federal subsidies. This Court has already rejected the dangerous doctrine that the Federal Government can extend its power over matters of local concern through aid programs (see *Butler* v. *United States*, 297 U. S. 1, 68-71). And certainly the control which would most smack of a Federalized dictatorship would be Federal control over the matter at which this investigation was directed: the fitness of teachers in bona fide institutions of higher learning from the standpoint of their political ideology and their influence on the thinking of students.

While there has rarely been an issue as to an extension of Federal power through Federal grants, the applicable principle is clear as a correlative of the frequent holding that the Government cannot coerce the sacrifice of Constitutional rights through the grant of benefits (see Petr. Br. p. 57). That is, the Government cannot extend its control through the power of the purse; it can neither affirmatively assume power in a matter to which its Constitutional grant of powers do not extend nor override Constitutional limitations on its granted powers. Thus, no legislative power over colleges and universities can be predicated on the grant of subsidies, and by the same token, the power to investigate by compulsory process, which extends only as far as does legislative power, cannot be predicated on Federal grants or subsidies. To put it another way; the Government cannot exceed its Constitutional limits by virtue of its benefactions; it cannot salvage an investigation which otherwise constitutes an unconstitutional interference with First Amendment rights through reliance on its grants and subsidies.

Respondent particularly stresses the fact that the Federal Government utilizes educational institutions to advance

various Federal programs: that "the Federal Government has contracted widely for the use of research facilities of American colleges and universities" (Resp. Br. p. 66). Indicative of the Federal Government's lack of control over these institutions is the fact that the research projects can only be assigned to the colleges and universities that voluntarily accept them. Indeed, the university most prominently involved in the instant investigation, Harvard, has avoided grants for secret research for the very reason that it believed Government investigation, appraisal, and clearance of professors was detrimental to scholarship.[2] Now respon-

[2] See statement of McGeorge Bundy, dean of the faculty of arts and sciences of Harvard University, on March 15, 1955, before the Subcommittee on Reorganization of the Senate Committee on Government Operations, Hearings on S. J. Res. 21, 84th Cong., 1st Sess., pp. 470-471: "Except in time of all-out war, it has been the historic policy of Harvard University to emphasize the importance to the nation of open research in basic subjects; for this reason we avoid engagement in secret government research, and we do not accept responsibility for the administration of security clearances of any kind. Exceptions to this policy have been extremely rare; currently Harvard has no secret contracts, no procedure for security clearance. * * * This policy is intended to make it possible for Harvard to make the greatest possible contribution to the advancement of knowledge * * * a university * * * must be guided in all its decisions by a steady respect for scholarly excellence and total freedom of inquiry. * * * In the Government you must be careful about discretion, political judgment, subordination, and many other qualities. * * * In the University, on the other hand, we start from a burning concern for individual excellence * * * The moral standards of great scholarship are stern, but they include a deep regard for the right of a colleague to his own honest convictions and his own choice of action * * * if the university, as an institution, is to engage in secret work, someone is going to have to pick and choose among its members * * * if the Government does it, then a part of the university comes under the surveillance of officers whose standards and purposes are not the same as ours."

In response to an inquiry from the American Civil Liberties Union on present policy, Dean Bundy stated in a letter dated November 3, 1958: "I know of no change in the policy of Harvard University with respect to government contract work."

dent's position is that the Federal Government acquires through the grant program an overall power of investigation, surveillance and control of political thought and association of professors in colleges and universities, even as to those institutions that have refused the grants.

Even assuming arguendo that Federal Government grants could be a source of any Federal investigative power, it would certainly be true, in view of the principles we have discussed as to an extension of power by this means, that the power would be a narrow one, restricted to the operation of a particular or potential program. The subsidies could in no event give the Federal Government a general and indefinite and undefined power to probe into matters of essentially local concern, such as seems envisaged by respondent. Respondent has not indicated that the matter under investigation has any direct connection with any of the existing or potential Federal subsidy programs (and see Petr. Br. pp. 58-59).

Finally, respondent's argument as to grants and subsidies does not show that the instant investigation is constitutional, even if we were wholly to ignore the principle that an extension of Federal power cannot be predicated on grants and subsidies. We must come back to the fundamental test of the validity of this investigation (see Petr. Br. pp. 27-28, 55-56): has the Government shown that the matter under investigation has such a "substantial bearing" on an issue of compelling concern to Congress that the restraint the investigation imposes on First Amendment rights is justified? Our main brief has demonstrated the drastic restraints imposed on First Amendment rights by this investigation (Petr. Br. pp. 42-50); respondent on the other hand has not satisfied its burden of showing that the instant investigation of the beliefs and associations of professors in established institutions of higher learning—

institutions which were not selected from the standpoint of subsidies, research facilities, etc.—had any substantial connection with Federal grants, and no such connection is apparent.[3]. Thus, the investigation is equally unjustified and unconstitutional under the First Amendment whether viewed from the standpoint of its connection with Congressional concern with overthrow of the Government (see Petr. Br. pp. 52-56), or Federal grant and subsidy programs.

3. *Facts as to the Purpose of This Investigation.*

The respondent next argues (Br. pp. 69-81) that the Committee had a valid legislative purpose in questioning the petitioner. But the respondent's own account of the purpose of the investigation, except for an erroneous emphasis on government subsidized secret research in universities and security clearance, confirms the indisputable fact that its purpose and thrust was the examination of the viewpoints and efforts at intellectual and political persuasion of private citizens in the academic world—college and university professors; it was from the standpoint of its intellectual effect that the professors' alleged or actual Communist Party membership, so much stressed by respondent, was examined (see Petr. Br. pp. 30-37).[4] Respondent misconceives the record when it injects the idea that the investigation focused on Government subsidized secret research in the universities and security clearance (Resp. Br. pp. 69, 79). It is only necessary to consult the Hearings to see that re-

[3] As we noted in our main brief, even if it be assumed that the Government has some legitimate concern with the content of the teaching in these institutions, the instant investigation would nevertheless be unjustified and unconstitutional (Petr. Br. p. 58, n. 54).

[4] This fact emerges from respondent's Statement even though it is interlarded with quotations of general principles from Communist writers which had been read into the hearings by Committee counsel, and which had little or no connection with the testimony (see R. 90-91, Resp. Br. p. 10; R. 121-124, Resp. Br. pp. 13-14).

spondent's statements are erroneous. Petitioner, who was engaged in the study and teaching of psychology, and the great majority of the other witnesses, were not even connected with departments involved in such research. When a professor's field happened to be the physical sciences or mathematics, he was sometimes asked whether he had worked on research for the Government and about his clearance for such work. Without disrespect to the Committee, however, the only true description of the place of these queries in the investigation is that the Committee once in a while stumbled upon some question relating to security in the course of an investigation which had the avowed and dominant purpose of investigating belief and expression of opinion.

It is apparent in the Hearing references cited by respondent (Resp. Br. pp. 67-68) as well as in several other instances where the Committee happened upon the fact that witnesses worked on research for the Government (Hearings, pp. 136-142; 1015-1016, 1038), that the questions on this point were wholly by-the-way. It is no more correct to say that the investigation was focused on Government research projects than to say it was directed at the problem of Communists in the Counter-Intelligence Corps of the Army. In similar fashion to the questions on classified research, Committee counsel came upon the fact that a witness had worked in the Army Counter-Intelligence Corps and later referred to this bit of information as evidence of the desirability of witnesses giving testimony (see Hearings, pp. 5798-5799, 5832).

It is obvious, as respondent seems to recognize in its argument as to the focus of the Hearings, that the investigation must look for its justification to its intended and dominant purpose; that purpose cannot be eked out from the stray and incidental bits of information to which respondent al-

ludes. The investigation did not, as respondent attempts to indicate (Resp. Br. p. 81), merely "touch upon" the intellectual or ideological phase of the Party, nor was this merely "one aspect" of the Party that was under investigation (see Resp. Br. p. 77). The intellectual and peaceful persuasion phase was *the* aspect at which the investigation was directed; information as to alleged participation in this type of Communist Party activity was the basis on which petitioner and all other witnesses were called, and was the only justification for their being interrogated (Petr. Br. pp. 28-31, 38-42, and Hearings, *passim*).

4. *Restraints Imposed on Freedom of Expression by Instant Investigation.*

Finally respondent argues (Br. 81-86) that the constitutionally protected interest against forcible disclosure of political associations and views must be subordinated to the Committee's interest in Communist Party membership among university professors. But respondent gravely errs in indicating that the only expression inhibited by the instant investigation is expression by Communist Party members and that the expression affected is "at least in substantial part, unlawful and unprotected by the Constitution" (Br. 60, 83-84). Bluntly stated, respondent's view appears to be that the instant investigation would have no effect on expression and association except for that of Communist Party members and except for inhibiting people from joining the Communist Party. But this Court clearly recognized in *Watkins* and *Sweezy* that an investigation like the instant one casts a pervasive restraint over the expression of all controversial and non-conformist views; for all—at least all who are not frankly defiant—will tend to avoid suspicion by suppression (see Petr. Br. p. 43).

The meat of this investigation, as shown not only by the Hearings but the Committee Report on them, was the wit-

nesses' forced confession of their expressions of lawful political dissent; it was on such dissenting expressions that the Committee's disapproval and suspicion fell throughout the Hearings (Petr. Br. pp. 32-37). Thus, contrary to respondent's argument, the expression which bore the major impact of this investigation not only is entitled to the protection of the Constitution, but the First Amendment rights here restrained are, moreover, those "which we value most highly and which are essential to the workings of a free society" (*Speiser* v. *Randall*, 357 U. S. 513, 521; and see Petr. Br. 43-44). Indeed, in the *Speiser* case this Court was assiduous about protecting "speech which falls close to the line separating the lawful and unlawful" (357 U. S. at p. 526)—unlawful, that is, in the sense of being an incitement of overthrow of the Government. Here the expression which was mainly affected and suppressed by the investigation was in no sense even close to the line of incitement of violence.

It is unimportant whether the words "activity and conduct" are applied to the matter under investigation (see Resp. Br. p. 79). We would agree that even thinking is activity and conduct. What is important is that thinking and expressing opinion, speechmaking and writing on political views, associating for the purpose of exchanging or advocating viewpoints, attempting to persuade teachers or other organizations to support political positions—all the activities with which this investigation dealt and which would as a result of it be approached with caution and timidity—are under the protection of the First Amendment, and it is indeed that Amendment's primary function to protect them.

"Margin of Error"—In respondent's depreciation of the restraint cast on First Amendment rights by the Committee's interrogation of petitioner as to alleged Communist Party membership, the chief factor respondent ignored is

the "margin of error, representing error in fact finding" (*Speiser*, 357 U. S. at p. 525)—a margin of course wider in congressional investigations than other proceedings because rules of evidence are not there observed. "The margin of error in fact-finding"—or more precisely in this case, the margin of error in fact-looking—is the major reason why this investigation inhibits non-conformist expression generally, rather than only expression by Communist Party members as respondent indicates (Resp. Br. p. 60). For, to say that petitioner or any witness can be asked whether he is a member of the Communist Party necessarily means, in view of the "margin of error," that he can be asked this question though in fact he is not a member. Again, if peaceful expression of opinion and political persuasion can be investigated in the belief that it is Communist-connected or a "ramification" of the Communist Party, it necessarily follows that opinion or activity which is not *in fact* so connected can be investigated in an effort to determine whether or not it has such connection. In sum, if possible connection with the Communist Party in and of itself is sufficient justification for an investigation, without consideration of the field and particular subject-matter of investigation, this necessarily means that the whole area of non-conformist political belief and expression and all persons engaging in such expression are subject to investigation, and thus to suspicion and restraint.

And indeed this has been the result of the view that Communist connection—which necessarily means *possible* Communist connection—is justification for an investigation, even though the investigation lies in the area of political expression. This Court has noted that the Committee's "range of activity has covered all varieties of organizations, including the American Civil Liberties Union, the C. I. O., the National Catholic Welfare Conference * * * various publications from the magazine 'Time' to the 'Daily Worker'

* * * it has repeatedly inquired as to membership in the Communist party and in other organizations which it regards as communist controlled or affected."[5] Again, in its latest report the Committee casts suspicion on expressions of opinion favoring amelioration of the immigration law, in that they may be Communist-inspired.[6] Indeed anyone expressing such an opinion could be investigated if the basis on which respondent supports the instant investigation is accepted: if the possibility of Communist connection per se is justification for an investigation in the area of political persuasion.

Any layman, possessed merely of common sense, can perceive the potential margin of error that must and does exist in a Congressional investigation. This margin and lay awareness of it is the major reason why a Committee investigation in the field of political persuasion—even assuming it is intended to be directed at the activity only of Communist Party members—restrains all controversial expression.

Freedom in the Academic World—Not only did the investigation cast a restraint on non-conformist expression generally, but it tended to impose inhibitions in the academic world in particular. For while the Hearings dealt with belief, discussion, and political persuasion outside as well as within the academic situation (see Petr. Br. pp. 33-37), the Committee's concentration was on such activities by college and university professors. The Committee thus treated members of this profession as particularly subject

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[5] *Watkins*, 354 U. S. at p. 202, n. 40, quoting the dissent in *Josephson v. United States*, 165 F. 2d 82, 95 (C. A. 2, 1947).

[6] Annual Report of Committee on Un-American Activities for the Year 1957, House Report No. 1360, 85th Cong., 2d Sess., pp. 13-14.

to surveillance and attack for their views and activities on political, social, and economic issues, and thereby exerted pressure on those in academic positions in particular to avoid suspicion by avoiding non-conformist expression. Further, the Committee indicated as one of its specific purposes the elimination from the teaching profession of those it identified as intellectually subject to the Communist Party (Petr. Br. pp. 5-6). This Government interference with the right of universities to select their faculty members and with the correlative right of persons to obtain faculty appointments, is obviously an interference with freedom of expression. For, an essential aspect of an academic position is the opportunity to develop and express viewpoints and the aim of the Committee, in interfering in faculty selection, was to control the development of opinion in the universities (see Petr. Br. pp. 5-6, 47).

We are not here concerned with how the universities and their administrators should determine the qualifications of faculty members. We are considering only the question of the Federal Government's interference with their freedom to make such determinations and the effect of that interference on the First Amendment right of expression in the academic world, where its maintenance is of the highest importance (Petr. Br. p. 44).[7]

Distinguishable cases.—Decisions permitting adverse governmental action related to Communist Party member-

[7] We need not enter respondent's debate with *amicus*, the American Association of University Professors, as to the meaning of "academic freedom" (Resp. Br. pp. 82-85). For our purposes it is sufficient to say that it is at least the right of persons in academic positions to that freedom from Government control of belief and expression which is the right of all citizens. And while it is certainly appropriate to consider all the investigations that would be validated by upholding the instant one (Cf. Resp. Br. p. 84), we need look no further than the one here involved for a gross interference with academic freedom.

ship relied on by respondent (Br. 59) are distinguishable because the instant investigation was directed squarely at the area of belief and peaceful political persuasion. This situation is similar to that in the *Speiser* case in which this Court distinguished the cases recited by respondent pointing out that they had not involved measures directed at expression but at "some interest clearly within the sphere of governmental concern," and that "the method of achieving this end touched on protected rights * * * only tangentially. * * * Each case concerned a limited class of persons in or aspiring to public positions by virtue of which they could, if evilly motivated, create serious danger to the public safety" (357 U. S. at p. 527). Here, as in *Speiser*, the apprehended danger was a danger from expression. Here, as there, First Amendment rights were not merely incidentally involved, but the governmental measure—in this instance an investigation—was directed squarely at the area of belief and expression.

Respectfully submitted,

EDWARD J. ENNIS
NANETTE DEMBITZ
DAVID SCRIBNER
Attorneys for Petitioner

ROWLAND WATTS
Of Counsel